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Immigration—A Broken System

BY C. LYNN CALDER, ALICE S. GLOVER, AND JOHN L. PINNIX

Like it or not, everywhere you turn these days you hear talk of immigration.

North Carolina has experienced some of the highest growth in the nation in the immigrant population over the past decade and the numbers continue to climb. North

Carolina attracts a variety of immigrants to the state because of several reasons.

Agriculture

The farming and agriculture industry in both the Eastern and Western parts of North Carolina draw a large number of migrant laborers to the state each year. These industries include both the old and established businesses of tobacco, apple, cucumber/pickle production as well as cotton, soybean, and peanut crops that require manual labor. The recent growth in the wine industry and seafood picking and packaging businesses has created increased job opportunities for manual laborers. Other established North Carolina businesses which historically use foreign labor



David Holloway/Getty Images
Hundreds of thousands of immigrants demonstrate on May 1, 2006, in downtown Los Angeles, California. The demonstration, called "The Great American Boycott 2006: A Day Without Immigrants" was organized by pro-immigrant organizations to pressure lawmakers to pass immigrant-friendly legislation that might open the path to citizenship for millions of illegal immigrants in the United States.

include chicken, hog, and turkey productions and operations. Many of these workers are foreign nationals looking for job opportunities and once they have found their way to North Carolina, many set down roots in the state.

International Business

The viability of the Research Triangle Park international companies is unquestioned and this growth of international corporations in our state has expanded to other areas of North Carolina including the Charlotte Mecklenburg and Triad areas. Charlotte is a

leader in international finance and banking and consequently, the area draws a number of foreign nationals for business purposes. The Triad is the unparalleled leader in the furniture industry and this industry attracts foreign labor as well as foreign purchasers.

Research Institutions

North Carolina is a leader in higher education across the country. Within an hour's drive, we have nearly half a dozen internationally known institutions of higher learning. To maintain the competitive edge, these schools court the best and the brightest from around the world and we are fortunate to have a healthy number of international scholars as visiting professors and visiting students from countries all over the world.

As a consequence of these major sources of

immigration, many of these individuals end up living in this state for many years and they build their lives here. Often, they have families who eventually join them in the state and the state continues to see an increased need to assist this population in better understanding their rights and obligations while living in this country, especially in light of the ever changing immigration laws that have lasting effects on this population.

Many practitioners are starting to see the effects of this diverse immigrant population in their practices. Tax attorneys have to consider the consequences of taxes for foreign nationals; family lawyers must work with international marriage, adoption, and divorce issues; criminal attorneys need to consider the special consequences of criminal judgments levied against foreign nationals; employment lawyers must work with businesses and employees who are not US Citizens. These days, it is hard to think of any legal practice area that isn't affected by the immigrant population. Consequently, we hope to shed some light on the broad topic of immigration and identify some of the aspects of the system that are "broken" for those who do not practice in the field of immigration and nationality law.

Employment Based Immigration

While highly regulated, legal business immigration is replete with examples of why and how the current immigration system is broken. By way of illustration, we offer: (1) an example of a major meltdown in one of the key nonimmigrant worker classifications, and (2) discusses how the principal process for workers to acquire lawful permanent status is broken. The immigration bar and the business community know that given these limitations and the substantial attendant costs, sponsorship of foreign employees is rarely resorted to except to address shortages in the US work force with workers whose presence is in the national interest. US employers are caught in a nearly impossible situation, which is not of their making. The abusers in most segments of the business world are found within a small, atypical minority. Yet American business is a prime scapegoat in the current immigration debate.

The Nonimmigrant H-1B Classification

In 1990, Congress imposed limitations on the number of professionals eligible to enter temporarily in the so-called H-1B (temporary worker) classification. This, admittedly arbitrary,

65,000 visa "cap" was not reached until the mid-1990's when Congress, facing a shortage threatening to negatively impact a booming economy, temporarily raised the visa cap to 119,000 and later to 195,000 for fiscal years 2001 - 2003. While creating limited "carve-out" exceptions, recent Congresses permitted the cap to revert to 65,000, despite the fact that the available visas are woefully inadequate. For instance, all of the new 65,000 H-1B visas subject to the cap for fiscal year 2006 (beginning October 1, 2005) were claimed by August 10, 2005.

Consequently, a public school needing a math, science, or foreign language teacher could apply for a foreign teacher on April 1, 2006 (the earliest filing date permitted) for a start date no earlier than October 1, 2006. Obviously, this creates an unacceptable instructional dilemma. As the economy continues to recover, all signs indicate that the allocation of H-1B visas will be exhausted earlier and earlier each year. The allocation for the upcoming fiscal year was exhausted on May 26.

A "carve-out" allocates 20,000 H-1Bs, which are exempt from the base 65,000 cap, to workers with a US masters degree, or higher. The 20,000 was exhausted for fiscal year 2006 on January 17, 2006.

Permanent Resident Cases Requiring a "Labor Certification"

Workers who make long term career commitments to the United States are often as desirous and anxious as their employers regarding the securing of the personal and professional stability afforded by lawful permanent resident status (which is evidenced by the so-called "greencard"). Over time, the current system has become replete with bureaucratic uncertainties and unconscionable delays altogether outside the original intent of Congress, which was to permit workers to come to the US whose presence is in our national interest. Once again, the system is broken.

Employer sponsored greencards are strictly regulated and limited by a quota system. Most cases require a certification by the US Department of Labor (DOL) that, among other things, there is no US worker available meeting the actual minimum requirements (as determined by the DOL) for the position vis a vis education, training, and experience.

Over the years, processing delays for labor certifications increased nationwide with some

regional offices experiencing near gridlock. On December 27, 2004, the DOL issued the final, long delayed, regulation for a new procedure: "Program Electronic Review Management" (PERM), 20 CFR Parts 655 and 656. When it became effective on March 28, 2005, PERM became the exclusive method to process labor certifications.

PERM purports to streamline the labor certification process through an "attestation," and possible audit, process. The "Promise of PERM" was for unaudited cases to be processed in 45 to 60 days. PERM filings may be web-based or by mail; however, mailed applications are discouraged since the DOL, itself, may make inaccurate entries that will result in a denial. As of yet, there is no indication that there will be any amelioration for a DOL error. After over a year, there is no certitude in PERM processing and numerous issues are yet to be resolved. The anticipated 45 to 60 day processing window for cases not subject to an audit has been illusory, with reports of unaudited PERM cases inexplicably being approved well after the "promised" 60 days.

The final rule includes a procedure to convert certain pending adjudicated labor certification applications, allowing PERM processing. For numerous reasons that are outside the scope of this article, the conversion process is not only flawed but fraught with perils that make conversion extremely ill advised in almost every instance.

The adjudicated labor certifications, which are believed, at one point, to have exceeded 400,000, filed prior to PERM are being processed by two Backlog Elimination Centers. Although the DOL has indicated that the backlog would be eliminated by the end of fiscal year 2007, observers feel that this date now only reflects the end of funding and is not otherwise realistic.

Another factor must be considered to understand the "perfect storm" facing business based immigration. Once the labor certification is issued, the employer may file a petition in behalf of the foreign worker. And at some point, the worker may file an application for a greencard based on the approved labor certification and the employer's petition. Congress has established an annual quota limiting the number of greencards that may be issued to foreign workers each year. If the quota is exceeded, a "line" is formed and the oldest approved petition is eligible for the next available greencard. A worker may only file for a

greencard when one is available under the quota. Even after filing, the quota may regress and if that happens, the greencard cannot be issued until the quota advances and “catches up” and a greencard is once again available. A worker’s place in line for a case requiring a labor certification is the date that the approved “labor certification” for the particular job was originally filed with DOL.

The current quota allocation was established by Congress in 1990. For 15 years, the quota did not adversely affect most employment-based cases. However, a tremendous number of cases were filed in recent years which were not promptly processed by US Citizenship and Immigration Service (formerly the Immigration and Naturalization Service). As progress was made in processing the large backlog of cases, quota limitations were reached in several categories. This was exacerbated by the “use it or lose it” nature of the process, to wit: if a category is allocated 30,000 greencards per year and the service processes only 25,000, the unused 5,000 are lost rather than carried forward into the next fiscal year. For a number of years, filings exceeded the quota, but the Service (and the State Department for cases processed abroad) did not process up to the available limit. It is estimated that since 1990, approximately 140,000 immigrant visas have been “lost” because of delays in processing. In 2005 Congress, faced with a national healthcare shortage, ordered the recapture of up to 50,000 of these lost greencards to be used for a limited category of cases not requiring labor certifications.

During 2005, the State Department, which administers the quota, determined that there were no available visas for certain categories requiring labor certifications (there is both a worldwide quota and a possible further limitation imposed on nationals of countries that contribute seven percent or more to the lawful US immigration). Initially, quota limitations were placed on certain cases involving nationals of China, India, and the Philippines. In March 2005 cut-offs were established for the “Other Worker Category” (for positions requiring less than two years of vocational preparation). Effective July 30, 2005, greencards became unavailable for all nationalities in the unskilled, skilled, and professional worker categories (“Other Worker” and EB-3) for the remainder of the fiscal year and no

greencards for these categories were issued between July 1 and September 30, 2005. It was understood that once the next federal fiscal year began on October 1, 2005, processing of greencards would resume. In September 2005, the Department of State announced availability of numbers permitting October 1st resumption of the processing of greencards; but determined that a cut-off date for processing eligibility was necessary since demand for greencards vastly exceeded previous estimations. Initially, in order for a case to be concluded and a greencard issued in October 2005, most beneficiaries in the EB-3 classification needed a priority date of, on or before, March 1, 2001. Persons who are charged to China, India, and Mexico required even earlier priority dates: China, May 1, 2000; India, January 1, 1998; and Mexico, January 1, 2001.

Effective at the start of fiscal year 2006, cut-off dates were also established for persons charged to China and India in the Employment Based Second category (EB-2), the category for members of the professions holding advanced degrees and for persons of exceptional ability.

Persons with priority dates that are not current will remain in line and become eligible for greencards once their place in line is reached. Each month, the State Department re-evaluates the availability of greencards and updates cut-off dates. Before Congress enacted a substantial increase in employment-based greencards in 1990, backlogs were fairly frequent and in some categories, the “line” moved forward fairly quickly. Despite this history, the State Department and knowledgeable observers believe that there will not likely be rapid forward movement of the line without Congressional intervention.

Today, the employer who successfully negotiates the PERM labyrinth may still wait a decade or longer for his valued employee to acquire a “greencard.” The “more fortunate” may be able to extend their non-immigrant stay and employment authorization during the process, but mere maintenance of status, if possible, has a cost that goes beyond the monetary. Careers stall, creativity suffers, families may be separated, the unnecessary anxiety is often almost unbearable.

Realistic amelioration has yet to appear. Without it, many of the best and brightest, whose like so materially contributed to

America’s post World War II prosperity, will understandably head the siren song of nations fortified with the playbook of that other America that is rapidly slipping away. They will go to countries who have not, out of caprice, pulled back the welcome mat.

Family-Based Immigration

Like employment, family based immigration revolves around a quota system and the system is replete with weakness and full of holes that often prevent families from residing together as a family unit for years.

Backlogged Quota System

Currently, only US citizens and Lawful Permanent Residents (LPRs) of the United States may apply for residence status for their family members. A Lawful Permanent Resident (“greencard” holder) may apply for a spouse, minor children under the age of 21, and unmarried sons and daughters over the age of 21. The backlog for these categories (2A and 2B) are often years long: for most countries, the wait is approximately five years long to bring in a spouse or minor child of an LPR and ten years long for unmarried sons and daughters. For some countries, the wait is even longer: seven years to bring in a spouse or minor child and 15 years for unmarried sons or daughters.

US citizens are permitted to petition for their spouses, minor children, and parents (these relatives are outside of the quota system) as well as married and unmarried sons and daughters, and brothers and sisters. The categories of sons and daughters as well as brothers and sisters are backlogged considerably. For most countries, unmarried sons and daughters of US citizens must wait five years; married sons and daughters have an eight year wait; and brothers or sisters have an 11 year wait. For some countries, the waiting times are even longer: 14 years for an unmarried son or daughter (Mexico) and 22 years for a brother or sister (Philippines).

Even for those family members who are outside of the quota system (spouses of US citizens, for example) the actual processing times can be quite long. Over the past five years, the processing time for USCIS to adjudicate the petition of a spouse of a US citizen has ranged from four to five months, to upwards of two and a half years—and that is only for “phase one” of the process if the foreign national spouse resides outside of the United States. The case must then be

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transferred from USCIS to the National Visa Center for processing (taking additional weeks or months) and then ultimately transferred to the post abroad for final processing. Depending upon the country, the various background checks and other layers of paperwork and verification can tack on literally months more of waiting before the spouse or minor children of US citizens are finally approved for an immigrant visa.

Unconscionable Processing Delays

Even for those US citizens or LRP who are fortunate enough to have their family members residing with them in the United States, the processing delays are such that literally years can pass before a final decision is rendered on a case. Why? "Security Clearance Checks." What does this mean? Nobody knows—really.

To its credit, USCIS has worked to decrease the adjudication backlogs and in the Charlotte USCIS suboffice, the number of adjudicating officers has increased considerably. While the numbers have increased, the efficiency has not kept pace. There are a surprising number of improper

denials based on incorrect information and the time, money, and energy spent in an effort to resurrect these cases is astounding.

The Risk of Consular Processing

In North Carolina, many foreign nationals from Mexico, Central, and South American countries must depart the United States in order to apply for an immigrant visa based on marriage to a US citizen spouse. Instead of being permitted to stay in the US to file the various petitions and applications for lawful permanent residency, they must "consular process" at the consulate or embassy of their home country.

Rather than a mere inconvenience, consular processing has become a nightmare of sorts. In most cases, the foreign national who must consular process is subject to either a three or a ten bar and in those cases, the individual will be prevented from returning to the US for either three or ten years, depending upon the amount of time he or she has remained in the US unlawfully. This means that the foreign national spouse must not only depart the US to process the immigrant visa case, but usually he or she must remain outside

the US while a waiver of the three or ten year bar is reviewed and adjudicated—often months and months.

The hardship of this separation on the family unit is obvious. Often, it is the foreign national spouse who is the main breadwinner in the family and he or she must leave a job and remain outside the country for months on end. Those individuals are not permitted to travel back and forth between the US and their home country. Unless the family has other sources of income, the US citizen spouse and children must find help elsewhere—residing with and relying upon family or friends while the foreign national spouse processes his or her case abroad. Even in situations where the family has decided to risk the separation in order to obtain lawful permanent resident status, the process is quite risky. Each case is reviewed separately and the standard for approval of these waivers is high: a showing of extreme hardship to the US citizen or LRP spouse. Extreme hardship does not include factors such as living separate and apart from the family unit. Usually, the factors necessary to prevail in these cases must go well beyond separation and include factors such as:

poor treatment options for medical conditions; lost economic or educational opportunities; family history; and obligations in the US are among the factors the government considers in determining whether to grant these waivers. The difficulty is that the only way to apply for the waiver is to actually depart the US and apply abroad, and there is no avenue for obtaining a decision on the waiver before departing the US. This means that in cases where the waiver is denied, the foreign national spouse must remain outside the US for up to ten years or longer, in some cases.

Immigration Enforcement Issues

While 9/11 created the impetus for passage of USA Patriot Act provisions expanding enforcement options available to immigration agents in the new Department of Homeland Security, many enforcement-related measures actually were enacted by Congress in 1996 as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA). The most noticeable effects of 9/11 on immigration enforcement have been greater utilization of statutory provisions previously available; issuance of regulations expanding enforcement options; and reducing opportunities to defend against removal, some of which have been ruled as improperly promulgated; an increased budget allowing for expanded enforcement measures; and the virtual elimination of discretion in determining whether or not to use available enforcement options. Examples of new enforcement measures which have taken place since 9/11 include designation of state and local law enforcement officers to perform immigration law enforcement functions; initiation of special "operations" by Immigration and Customs Enforcement (ICE) targeting particular immigrant populations; increase in the number of border patrol agents; expansion of application of expedited removal; and the opening of a new detention facility to detain families pending their removal, along with plans to construct more large, remotely located detention facilities.

IIRAIRA provisions significantly affected the immigration consequences of criminal offenses, requiring that criminal attorneys consider the citizenship/immigration status of their clients. Two perhaps most often encountered provisions are the expansion of the definition of "aggravated felony" under the Immigration and Nationality Act (INA), INA

Sec. 101(a)(43), 8 U.S.C. Sec. 1101(a)(43), and the amendment of the definition of "conviction" for immigration purposes, INA Sec. 101(a)(48), 8 U.S.C. 1101(a)(48).

The definition of aggravated felony may include offenses which are neither "aggravated" nor "felonies" under state law. The provision covers a range of offenses from (A) to (U) often including numerous offenses under each subsection. Whether an offense is deemed an aggravated felony may depend on the sentence imposed (whether suspended or not), amount of loss to the victim, or the federal definition. The statute and interpreting Board of Immigration Appeals and federal appellate court decisions must be consulted to determine the scope of the definition. Whether an offense is determined to be an aggravated felony directly affects whether the non-citizen defendant is eligible for admission into the United States, relief from deportation, and naturalization. Further, aggravated felons may be subject to expedited removal and often are subject to mandatory detention without opportunity for bond pending their removal hearings. Foreign nationals convicted of aggravated felonies first carry out whatever state or federal sentence is required, then often face deportation with no waiver available even if they have been lawful permanent residents for many years and have US citizen spouses and children. They may never become a US citizen.

"Conviction" for immigration purposes includes, predictably, a formal judgment of guilt. However, conviction also may include (a) a finding of guilt, a plea of guilty, a plea of *nolo contendere*, or admission of sufficient facts, along with (b) an order of some form of punishment, penalty, or restraint. Conviction is interpreted broadly by immigration courts and the Board of Immigration Appeals, and includes PJC's and deferred adjudication where there is an admission, some sort of punishment such as community service, rehabilitation class, or fine and dismissal. If there is any admission and any form of penalty, "conviction" is likely to be found. Furthermore, expungement or later dismissal pursuant to a state rehabilitative statute does not eliminate the conviction for immigration purposes. The only time that such a strategy may work is when a case is reopened and dismissed due to a violation of due process.

Furthermore, although the criminal related grounds of removal (deportation) under INA Sec. 237(a)(2), 8 U.S.C. Sec.1227(a)(2), generally require a conviction (under the INA def-

inition), the criminal related grounds of inadmissibility may not. INA Sec. 212(a)(2)(A), 8 U.S.C. Sec. 1182(a)(2)(A) provides that admitting to committing acts constituting the essential elements of a crime involving moral turpitude causes one to be inadmissible. The grounds of inadmissibility apply to foreign nationals who are in the United States applying for a new non-immigrant status or permanent residence; these grounds also apply to foreign nationals entering the US, including lawful permanent residents who travel outside the US, even on a short trip.

Although heightened enforcement and strict measures regarding foreign nationals with criminal convictions may not be indicative of a "broken" immigration system, the manner in which many of these provisions are implemented do contribute to the impression that the system does not work properly. For example, under Attorney General John Ashcroft, the number of Board of Immigration Appeals members was reduced by almost half and procedures for the adjudication of appeals were drastically revised to replace traditional three-member panel review with summary disposition of cases, without written opinions, by single BIA Members. Other post-9/11 regulations were issued replacing the board's *de novo* review of immigration judge findings of facts with a "clearly erroneous" standard and greatly limiting review of credibility determinations. The abusive conduct by immigration judges and lack of meaningful review by the board has been so criticized by federal courts of appeals that in January 2006, Attorney General Alberto Gonzales ordered a comprehensive review of the immigration court system. In enacting the REAL ID Act of 2005, Congress limited judicial review available in immigration cases by courts of appeals and district court jurisdiction over most immigration-related habeas corpus actions.

On a local level, with local law enforcement more involved with investigation and enforcement of immigration laws, often without adequate training regarding the complexities of immigration laws or dealing with non-English speakers, there have been numerous allegations of racial profiling.

Although analysis of all the specific issues involved in the current immigration reform debate is beyond the scope of this article, review of the highlights of enforcement and due process related provisions passed by the US House and Senate shows that enforce-

ment is seriously addressed by both Houses. Much has been made about the exceedingly harsh provisions of the enforcement-only bill passed by the House (H.R. 4437) last December; and the Senate Bill (S. 2611, the Comprehensive Immigration Reform Act of 2006) approved on May 25, 2006, which was to hopefully provide relief to the 12 million undocumented foreign nationals in the United States and more reasonably address enforcement concerns. While the Senate did indeed attempt to reform the broken legal immigration system and approved compromise immigration reform legislation, numerous enforcement measures are included in S. 2611 as well.

In the interest of reform, the Senate bill includes a long-term path to permanent residence for many of the 12 million undocumented immigrants in the country, a new temporary worker program, increases in family and employment-based permanent visas, reforms to the agricultural worker program and high-skilled immigration programs, and relief for undocumented high school graduates. The bill also includes some very harsh enforcement provisions and further erosion of due process protections for non-citizens. Some of these enforcement provisions include criminalizing unlawful entry into the US, further encouragement of local law enforcement involvement in enforcing immigration laws, criminalizing use of false or altered documents to obtain jobs, and ineligibility for legal status in the future for working with someone else's name or social security number. The Senate bill also overturns recent Supreme Court decisions prohibiting indefinite detention of immigrants believed to be removable and further limits federal judicial review of immigration laws. This bill again broadens the INA definition of "aggravated felonies" and provides for mandatory detention of deportation of aggravated felons regardless of their present immigration status or length of residence in the country.

H.R. 4437, on the other hand, has been highly publicized because of its enforcement only measures. The House has taken the position that legal immigration reform and enforcement do not go hand-in-hand and would not consider proposals related to legal immigration. Among other measures, provisions passed by the House include the following: another expansion of the definition of aggravated felony related to smuggling and illegal entry and reentry crimes (Sec.

201); expansion of alien smuggling offenses (Sec. 202); creation of a new federal crime of "unlawful presence" which would essentially render every violation, however minor, technical, or non-intentional, a federal crime (Sec. 203); expansion of local law enforcement agency authority to enforce immigration laws (investigate, identify, apprehend, arrest, detain, or transfer) (Sec. 220, 221, 222, and 225); requirement of detention of all non-citizens apprehended along the border or at ports of entry until removal or final decision regarding admission (no bond) (Sec. 401); expansion of expedited removal provisions (Sec. 407); elimination of judicial review of good moral character findings in relation to a naturalization application (Sec. 609); effective increase of the time good moral character must be established for naturalization purposes from five years to a lifetime and requires retroactive application of the term "aggravated felony" to bar a person from a finding of good moral character (Sec. 612); major revisions to employment eligibility verification, including creation of a new system to verify employment authorization, mandatory participation in the new program for all employers, and significant increase of the civil penalties for hiring, recruiting, and referral violations (Title VII); unprecedented, single-judge judicial review of orders of removal, so that review is no longer available unless a single judge determines that the petitioner has "made a substantial showing that the petition for review is likely to be granted" (Section 805).

The two bills will be considered together in House/Senate conference where attempts at compromise will be negotiated.

Conclusion

The reality of today's global society means that immigration is a fact of life. Congress appears to be slowly coming around to recognizing this fact. As of the deadline for this article, the US Senate had passed an immigration bill that was substantially different than the punitive immigration bill passed in late 2005 by the House of Representatives. Neither is an answer or fix to many of the problems outlined in this article and it remains to be seen whether the two houses of Congress can work out a meaningful compromise.

We live beside, work with, employ, and socialize with foreign nationals from many different continents. We must continue to

strive for our historical competitive edge and foreign nationals are an essential part of that process. Unconscionable delays and excessive backlogs only discourage the best and the brightest from joining our ranks and it prevents families from functioning together as a family unit. We can and must do better. ■

C. Lynn Calder, a graduate of Campbell University School of Law, practices in all areas of immigration law with the Raleigh firm of Allen and Pinnix, PA. Ms. Calder is a past chair of the Carolinas Chapter of the American Immigration Lawyers Association and a trustee emeritus of the American Immigration Law Foundation. Currently, she serves on the national AILA Liaison Committee with US Immigration and Customs Enforcement and chairs the North Carolina Bar Association Immigration Law Committee. Ms. Calder regularly participates as faculty for continuing legal education programs and has taught Immigration Law at NC Central University School of Law. Ms. Calder is the associate editor of AILA's Immigration Litigation Toolbox (2005) and Ethics in a Brave New World (AILA, 2004). She is a North Carolina Board Certified Specialist in immigration law. Ms. Calder is included in Best Lawyers for immigration law.

Alice S. Glover has a private immigration law practice, Alice S. Glover, PLLC, in Chapel Hill, NC, and she is Of Counsel to the Raleigh law firm, Allen and Pinnix, PA. She is an adjunct law professor at North Carolina Central University School of Law having taught immigration law, legal writing, and professional responsibility. Ms. Glover is a former law clerk to Judge Linda McGee and an aide to US Senator Terry Sanford concentrating in immigration and Department of State constituent matters. She is a past chair of the Carolinas Chapter of the American Immigration Lawyers Association and has lectured on various immigration topics for continuing legal education programs.

John L. Pinnix is a past president of the American Immigration Lawyers Association and a founding member of AILA's Carolinas Chapter. He attained BA and MA degrees at UNCG and his JD at the Wake Forest University School of Law. He has served as an adjunct professor at North Carolina Central University School of Law and as a senior lecturing fellow at Duke University School of Law. He is a principal in the Raleigh law firm, Allen and Pinnix, PA, and is a North Carolina Board Certified Specialist in immigration law.

The Mecklenburg Bar Review— Give Them an Audience and “They Milk it So Hard it Moos”

BY CORBI ANDERSON

M Meet the Mecklenburg
Bar Revue: lawyers by
day . . . singers, dancers,
and lyricists by night . . .

and living proof that you can manage to “have a life” beyond the law.

The group includes a district court judge, a public defender, an

attorney at legal services, big-firm lawyers and small-firm

lawyers, trial lawyers and corporate lawyers, partners and associ-

ates, and one professional entertainer who is not a lawyer but is

married to one. They are a busy bunch. By one member’s count,

the parents among the group together have two dozen children

under the age of 16.



The current incarnation of the Bar Review began in 1999, when Nancy Norelli began her term as president of the Mecklenburg County Bar. She made it her mission to institute a team-building activity that would increase collegiality and professionalism. “We convened in January 2000 to begin writing a new musical revue to spoof ourselves, the judiciary, and current events,” says Norelli, now a Mecklenburg County District Judge.

The Bar Revue performs parodies written by cast members Brian Kahn and Doug Sea. Using well-known tunes from Broadway musicals and the pop charts as their starting point, they write takeoffs on every imaginable aspect of our legal system. No group is safe from the Bar Revue’s humor.

The performers take on clients:

Excerpt from “Hey Big Lender” (a parody of “Big Spender” from Sweet Charity)

The minute I came into town,
I could see you were a grand institution,
A real big lender!
No conflicts I can find.
What do I have to do
to be your counsel assigned?
So, let me get right to the point.
Not just any bank can pay my kind of fee.
Hey, big lender, spend . . .
your legal dime with me.

They take on judges:

Excerpt from “Overactive Judges” (a parody of “Gary Indiana” from The Music Man)

Overactive judges, overactive judges,
they’re the ones who
make the law up as they go along.
Those overactive judges,
overactive judges,
they will not appreciate
the topic of this song.

If the Pledge of Allegiance
mention of God offends you,
have a court find
the Establishment Clause extends to
your own daughter’s third grade class
and all of her friends, too . . .
‘til the highest court
cuts your standing short.

Overactive judges, overactive judges,
disregarding precedent
at quite alarming rates.

Those overactive judges,
overactive judges,
overactive judges, in OTHER states.

And, of course, they poke fun at themselves as lawyers most of all:

Excerpt from “Dream Court Case” (a parody of Bobby Darin’s “Dream Lover”)

Every night I hope and pray, a dream
court case will come my way

Where there is clear liability, and I get
one-third contingency,

Because I want a case that’s good as gold,
I want a dream court case so I’ll be rich
before I’m old.

How the Bar Revue Was Born

The Bar Revue, by other names, can trace its roots to 1989, when a group of Mecklenburg County lawyers got together to sing for Law Day. Nancy Walker is the only current member of Bar Revue who was in that original group. She performed with her father, James E. (“Bill”) Walker, who died in 1993. Her mother, she says, was their biggest fan.

Former Mecklenburg County Bar President C. Sydnor Thompson recruited Keith Martin, producer and managing director of the Charlotte Repertory Theatre, to whip the group into shape. Martin’s version of his recruitment: “I was dragged in kicking and screaming by Sydnor Thompson. He brought me in the night before a performance for Law Day. I got one rehearsal, so it was only triage at that point.”

The North Carolina Bar Association asked the group to perform at its state convention in 1991. At that point, Walker says, the Mecklenburg County lawyers borrowed material from colleagues in the Chicago bar. As an old script reveals, the group then called itself the “Mecklenburg Bar Flies.”

Then, as now, the group put the lawyer’s life—or lack of it—in the spotlight:

Excerpt from “Write Me a Brief” (a parody of Billy Joel’s “Piano Man”)

Partners:

Write me a brief, young associate.

Write me a brief tonight.

For I’ve got two front seats for the
Hornets game

And you have from now till daylight.

Associates:

I’m the only one here on this Saturday
And the janitor’s now my best friend.
And he knows it’s a brief that’s causing
my grief
While some partner’s out washing his
Benz.

And my office, it looks like a garbage
dump.

My social life doesn’t exist.

Still they keep coming by
With their files heaped high

And say “I’m sure you’ll find time for
this.”

Cast member Randy Phillips, who describes himself as “one of the older active members” in Bar Revue, says the group “morphed and reappeared every few years” until it reached its current incarnation. Others who joined in at various times include Charles F. Bowman, Donald H. Caldwell, Nicole Brovet Cantu, Mark B. Edwards, Judge Shirley L. Fulton, Carolyn G. Hisley, G. Martin Hunter, Tamara L. Kettner, Leigh Moran, Ron Norelli, R. Anthony Orsbon, James Y. Preston, James M. Talley Jr., Christian R. Troy, Melvin L. Watt, Felicia A. Washington, Regina Wheeler, Samuel S. Williams, and P. Marshall Yoder. “We have a distinguished group of alumni,” Walker says.

The Director’s Take on Bar Revue

Martin saw the group of singing and dancing lawyers, in its various incarnations, through 15 years’ worth of performances before leaving it last year, when he moved to Virginia to become managing director of the Richmond Ballet. “I didn’t realize the only way to get out of this would be to move out of state,” he says.

Martin “was a patient and always fun director,” says Tommy Odom, who has performed with Bar Revue since 1999. Judge Norelli describes Martin as “brilliant.” Cast member Manley Roberts says Martin personally recruited talent, choreographed numbers, ran lights and sound, and “turned a series of random songs into a real production.” Martin recruited the group’s current musical director, LouAnn Vaughn, a professional singer, actress, and dancer in her own right. Like Martin, Vaughn is not a lawyer, but she notes that being married to one gives her ample ammunition to use in Bar Revue.



Photo/Nancy Pierce

LaVenetra Reaves, LouAnn Vaughn, and Lisa Flowers entice would-be bank clients with the Sweet Charity parody "Hey, Big Lender!"

Martin says the cast members "work very, very hard, and they play very, very hard. They are not professionals, though some could hold their own on the professional stage. What others may lack in talent, they more than make up for in enthusiasm. They kid and prod each other." In Bar Revue, Martin adds, "there are no prima donnas, no egos. They are there because they want to be there. That makes all the difference in the world to their commitment to the project."

The men in Bar Revue "are never going to become dancers," Martin admits. He recalls his first rehearsal with them: "I told them, 'Put your right foot out,' and three out of five put their left foot out. From that point on, I knew to put the ladies in front."

Martin speaks fondly of the group's love of being on stage. Usually, he explains, a show gets tighter and thus shorter with every rehearsal, but with this group, "every time, it's longer and longer. You need a hook to get them off the stage. As individuals, they love to perform, especially in front of their peers. They make the most of every moment. They milk it so hard, it moos."

But the Bar Revue members love being lawyers as well as being performers, Martin says. "They love their chosen profession. We can poke fun at the law in Bar Revue, but we can never ridicule it," he says. One of the Bar Revue's favorite finales, *There's No Practice Like Law Practice*, bears this out.

Excerpt from "There's No Practice Like Law Practice" (a parody of "There's No Business Like

Show Business" from Annie Get Your Gun)

There's no practice like law practice, a flawed act as we know.
Fighting for your client can be thrilling, standing up in court for equal rights, answering a circuit judge's grilling to see your billings go to new heights. No one partners like law partners, they keep you on your toes.
Even with a turkey that just can't be sold your case dismissed, you're out in the cold, still you wouldn't trade it for a sack of gold, so Bar stand up and crow . . . for that's all for our show!

Recent Gigs: From Wilmington to Washington, DC

The Bar Revue has performed in Asheville, Wilmington, Raleigh, Statesville, and Washington, DC, in addition to its hometown of Charlotte. For the NCBA's centennial celebration at its June 2000 convention in Asheville, Judge Norelli suggested a show "as a birthday present from the Mecklenburg County Bar." That performance won rave reviews, and the group, accompanied by cast members Odom and Ray Owens on guitar, sang well into the morning, entertaining the crowd that lingered after the show.

When Charlottean Norfleet Pruden was inducted as president of the NCBA in June 2002, the Bar Revue prepared a show in his honor. The show included an ode to Pruden, "This Man Is Our Man," performed by

Owens to the tune of "This Land Is Your Land." The Bar Revue then brought that show home to Theatre Charlotte, donating the proceeds from their sold-out shows to the Mecklenburg Bar Foundation's *pro bono* fund.

The Bar Revue made the national scene when it was invited to perform in Washington, DC, for the American Bar Association's Annual Meeting in August 2002. The group sang and danced at a reception at the Cosmos Club honoring North Carolina's A.P. Carlton as he became president of the ABA. For that performance, "100% of us delivered," Judge Norelli says, "even though it meant an 800-mile round-trip trek via van for some, and a late night fly-in for one proud father on the evening of his son's wedding." The ABA's Executive Director called their performance the "best entertainment ever presented at an ABA convention."

In 2004, the Bar Revue performed for the Mecklenburg County Bar's first dinner honoring federal judges. Then came the "2005 World Tour," with three performances in less than a month—for Calvin Murphy's induction as president of the State Bar on October 20, for the Eastern District's dinner honoring its judges on November 10, and for the Mecklenburg County Bar's dinner honoring state judges on November 17.

During these performances, Judge Norelli says, "the audience was stunned by Calvin [Murphy] taking center stage with women fainting all about." A vision in white polyester, Murphy performed a Barry White parody written specially for him:

Excerpt from "Can't Get Enough of the Law, Babe" (a parody of Barry White's "Can't Get Enough of Your Love, Babe")

My bar and I . . .
can't get enough of the law, babe.
Oh, I don't know, I don't know why,
I can't get enough of the law, babe.

Oh, and when I read the blue book,
a tear comes to my eye.
It's like the more I learn,
the more I want, and baby, that's no lie.

Tell me, what can I say?
What am I gonna do?
I read each case and every statute, too.
I try to speak at every CLE.
In the past five weeks,
I went to twenty-three.
Oh, all I know is every time I appear,

I stand up, the judge walks in,
I start to sweat,
look what you got me doin' . . .

My bar and I . . .
Can't get enough of the law, babe.

Cast member LaVenetra Reaves says pretending to faint as Murphy made his appearance has been one of her favorite Bar Revue moments. Murphy himself modestly says, "I can assure you it's the first time a woman ever fainted over me."

The Men Behind the Music: Doug Sea and Brian Kahn

Owens describes the Kahn-Sea writing partnership for the Bar Revue as "a Lennon-McCartney thing, or perhaps a Gilbert-and-Sullivan thing."

Sea says he has always been "a bit of a punster." He loves wordplay. He writes songs for friends' birthdays and church follies, as well as for the Bar Revue. The key to the Bar Revue parodies, he says, is finding a song that fits the idea. Sea and Kahn have had "some spirited debates over lyrics," Sea says. "He's such a perfectionist, which I've come to appreciate. We respect each other." Sea also pays tribute to former member Lee Spinks, who was "the driving force behind the lyrics" when he and Kahn came along.

The audiences' response to the Bar Revue's performances "means a lot to us," Sea says. "It shows that lawyers and judges really do want to laugh at themselves. We've spared no one. And they've all been good sports," he says. "Lawyers are craving a fun way to interact with each other," and the Bar Revue gives them that.

Sea says his boss at Legal Services of Southern Piedmont, where he is a senior attorney, has supported his involvement in Bar Revue. Sea believes his participation in Bar Revue has helped make the Legal Services program more visible within the Bar.

The other half of this writing duo, Kahn, was first tapped to write for Bar Revue during law school, when he worked as a summer clerk for a firm in Charlotte. He has performed with the group ever since and has co-written two of its major productions.

Kahn learned to do musical arrangements in undergraduate school, when he joined an *a capella* group, Tar Heel Voices, at Chapel Hill. He taught himself to play guitar using the Internet and describes himself as "a poor

guitarist" who plays "mostly chords to cheesy '80s songs." He grew up listening to Mark Russell and Weird Al Yankovic, and he holds them responsible for his penchant for parody.

In addition to writing and performing in the Bar Revue, Kahn is the star and driving force behind *Charlotte SQUAWKS*, a musical revue that parodies life in the Queen City. Martin, who also produced *Charlotte SQUAWKS*, says it's easy to miss Kahn's propensity to "ham it up" when you first meet him. "He's quiet, gentle, unassuming," Martin says, "but put him on stage and you start to smell bacon."

Kahn's sounding board for his parodies is his wife, Raizel Arnholt Kahn, who has her own litigation practice. She describes her husband as "the hardest working person I've ever met" but adds that "he never shows that he's stressed, even when he has a million things going on. He's amazingly calm and even-tempered." Judge Norelli adds: "He gets it done, with a big smile on his face. He makes everyone else feel good."

The Cast Members: How Do They Do It? And Why?

With day jobs that often extend into night, how do these lawyers find time for Bar Revue? Here's what a few of the cast members have to say:

Flowers: "We Manage to Keep a Light Heart"

Lisa Flowers has two demanding full-

time jobs—as the mother of four girls, ages 16, 13, 11, and 2, and as the education law attorney for the Council for Children's Rights. "I generally don't get as much sleep as most people," she admits. "You must learn to juggle." Martin notes that "we've used three of Lisa's daughters as stand-ins during rehearsals. We haven't used the baby yet." But Flowers has gone through rehearsals carrying one of her daughters. Flowers got an undergraduate degree in dance and performed and taught professionally before she went to law school. "I'm a frustrated dancer and performer from way back," she explains. Bar Revue "is what keeps me sane. I can't imagine living in Charlotte and working as a lawyer without that group. We enjoy performing, and we enjoy each other's company, too. Even at crunch time, we manage to keep a light heart."

Phillips: "You Don't Begrudge the Time"

"It is daunting juggling commitments," Randy Phillips concedes, but he quickly adds, "you don't begrudge the time" because it is such fun. "There's some value for your practice" in being in Bar Revue, he says, from "the relationships you establish, and the broader perspective you gain on the profession." Standing up in front of a crowd, especially for a trial lawyer, is a great experience, he adds. Recalling the Bar Revue's performance for the Eastern District dinner in 2005, he notes "that's the only live appearance I've had" before any of those judges.

The men of the Bar Revue: They "Don't Know Much About Property," but they do know "What A Wonderful Bar This Can Be."



Photo/Nancy Pierce



Photo/Nancy Pierce

Hillary Clinton tries to convince husband Bill that it's time to "Back The Wife" in the style of Bobby Darrin's "Mack the Knife."

Higgins: "Bar Revue Lets Us Step Back and Laugh"

Sally Higgins is a big believer in multi-tasking, and she has to be as the mother of three daughters ages 11, 8, and 6, and a lawyer with a full-time litigation practice. She brings her knitting to the Bar Revue rehearsals, she admits, because "I'm not good at sitting still." Higgins says being in Bar Revue is "worth the investment. Getting to know the other people has been such a gift." She enjoys the fact that members come from all types of law practice—criminal and civil, public and private, and every subject area. Without the Bar Revue, she says, she would not have had the opportunity to get to know lawyers from such different walks of life. "There's so much stress and pressure in what we do, and Bar Revue lets us step back and laugh at the profession that causes the stress," Higgins says. "We laugh a lot—at every rehearsal and every performance."

Roberts: "If It's Your Passion, You Have to Carve Out Time for It"

Manley Roberts finds Bar Revue "a perfect antidote to what you do every day in the law. You're under stress, worried about saying the right thing. Here [in Bar Revue], you let it all out, you say what you want to say, and everybody takes it and laughs about it." Roberts says he carves out time for Bar Revue for his own mental health. "If it's your passion, you have to carve out time for it." In addition to Bar Revue, Roberts is involved in the Oratorio Singers of Charlotte. He plays

jazz piano with a group of friends. For years he performed in an *a capella* jazz group. He has also been involved in Chamber Music at St. Peter's. Roberts juggles all this while being married to a member of the Mecklenburg County Board of Commissioners and raising two children, ages 9 and 6.

Owens: "Don't Give Up Outside Interests When You Pass the Bar Exam"

Ray Owens says the opportunity to play music and have fellowship with his fellow Bar Revue members is "recharging" for him professionally. "It's a pause in what is otherwise a demanding profession," he says. "Lawyers are some of the most talented people I know when it comes to creativity and performing. Those are clearly parts of our tradition as lawyers, whether transactional or trial lawyers. It's important for lawyers to maintain their outside interests throughout their lives and not just give them up when they pass the bar exam." Owens finds many outlets for his interest in music. With Asheville lawyer Marc Rudow, he recently released a CD, *Midnight on the Water*, that features Irish music and traditional mountain music. The pair have performed together (with Owens on guitar and Rudow on fiddle) since they were in law school at Chapel Hill.

Walker: "You Just Find the Time to Do What You Enjoy"

Nancy Walker says her strong suit as a member of Bar Revue is that "I'm pretty unembarrassable." Indeed, Sea refers to her

as the group's "clutch performer," who "never fails on stage." He also notes that "she has written some great songs." Walker says the group's performances in Charlotte are the most fun. "We get a little more nervous here, and we laugh a little more when we are in front of our peers." It's important to socialize with other lawyers and see them in a non-adversarial setting, Walker says. How does she find time for Bar Revue? "You just find the time to do what you enjoy."

Judge Norelli: "Pick Something You Think Should Happen"

"Regardless of how crazy and busy your practicing life and home life become, you can make time for something you love," Judge Nancy Norelli concludes. "Practicing law is so consuming, exhilarating, frustrating, and aggravating that it's often hard to save a few minutes for the things that can give us a chuckle or a sigh of satisfaction," but these are the things that "may well last for a lifetime," she says. Her advice: "Slow down. Enjoy those wonderful colleagues in the Bar. Pick something you think should happen. Make it happen with other attorneys. The enriched quality of your practice will even make some of your working days easier."

Bar Revue Members

- Lisa C. Flowers, Council for Children's Rights
- Sara W. Higgins, Kennedy Covington Lobdell & Hickman
- Brian A. Kahn, Helms Mulliss & Wicker
- Calvin E. Murphy, Murphy & Chapman
- The Hon. Nancy Black Norelli, District Court of North Carolina
- Thomas L. Odom Jr., The Odom Firm
- Raymond E. Owens Jr., Kennedy Covington Lobdell & Hickman
- Randel E. Phillips, Moore & Van Allen LaVenetra Walls Reaves, Mecklenburg County Public Defender's Office
- Manley W. Roberts, Helms Mulliss & Wicker
- Douglas S. Sea, Legal Services of Southern Piedmont, Inc.
- Nancy E. Walker, Whitesides & Walker
- LouAnn Vaughn, Musical Director ■

Corby Anderson is a partner in the Charlotte office of Helms Mulliss & Wicker, PLLC. Her practice focuses on intellectual property and media law and commercial litigation.

Ideals and High Heels— *A Look at Wake Forest University's Elder Law Clinic*

BY KATE MEWHINNEY

I would like to help my parents as they get older. I want to give back to the community. I am thinking of elder law as a possible career path. I learn better by doing.

Wake Forest's law students give many reasons for signing up to take the course called The Elder Law Clinic. As their professor, I have learned there is more to this story. Why put in long hours at the clinic, meeting clients, juggling cases, and tackling new legal issues?¹

To quote one student, "I learned to wear heels in this course." The students really like wearing those nice outfits and looking like young professionals! Even better, their classmates ask them if they have that *most* valuable of things: a job interview.

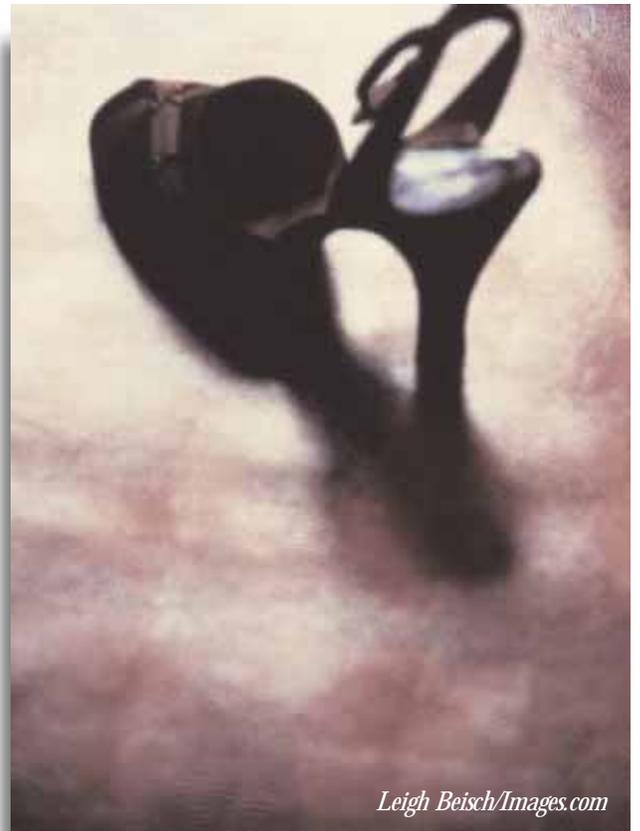
Changing from college garb to office attire is just the superficial side of the many changes going on in these soon-to-be lawyers. Besides trying on that new persona in a power suit, students want to help those in need and to explore a rapidly growing field of practice. As their mentor and professor, it is a genuine pleasure for me to teach them and watch them mature as attorneys.

Coming to The Elder Law Clinic well-prepared by the school's traditional faculty, the students are eager to put into practice

what they learned about civil procedure rules, will drafting doctrines, and family law principles. Only after the mid-point of law school are they permitted to actually represent clients.² Whether students are headed for a general civil practice that is seeing more "elder law" cases³ or to a corporate setting that addresses the "mature market," this clinical experience is a good strategic move on their part.⁴ Let's first take a look at some basics about the program.

Short History and the Structure

Around 1990, Wake Forest Law School Dean Robert K. Walsh learned that the university's medical center was planning a multi-disciplinary center on aging. Looking to increase the law school's clinical offerings, Dean Walsh collaborated with then dean of



Leigh Beisch/Images.com

the medical school, Dr. Richard Janeway,⁵ to include an elder law program. With a gift from R.J. Reynolds in honor of its retired CEO, J. Paul Sticht, such an innovative center was soon on the drawing board.⁶ Several years later, the J. Paul Sticht Center on Aging and Rehabilitation opened at the Wake Forest University Baptist Medical Center.⁷

This partnership has evolved into an exciting and mutually beneficial relation-

ship. But more about that later.

Who gets legal assistance at The Elder Law Clinic? Most clients are retired people who live in the community, and all must be age 60 or older. The legal services are provided at no charge, pursuant to ABA accreditation rules for law school clinical programs. These rules also bar students from being paid when enrolled in a clinical program.⁸ Clients must meet financial eligibility requirements⁹ and some types of cases are not accepted, such as traffic, personal injury, criminal, and business matters. Clients of The Elder Law Clinic are generally from Forsyth County or nearby counties. They apply for services by completing an application form that is available by calling the clinic or found on its website.¹⁰

A part-time, one semester clinical experience is intense. Each student meets his or her first client within a week of starting. To increase the student's comfort level, the initial cases assigned are typically single issue matters. One client wants a power of attorney and a living will. Another client has a creditor hassling him about past due payments. Cases are also assigned to match the students' interests. A student may even come with a passion for will drafting, having enjoyed their "Dead People" classes with Professors Patricia Roberts or Don Castleman.¹¹ Within a few weeks, the student is juggling a variety of cases.

Each week, the class meets as a group at the law school. This two hour class, generally taught by the clinical professor, covers substantive law and lawyering skills. Interviewing techniques and ethical rules are emphasized. Substantive topics covered include guardianship law, estate planning issues for the small estate, and long term care insurance. Winston-Salem elder law attorney Bailey Liipfert is a popular guest lecturer, explaining long-term care planning issues and the broad range of cases his firm handles in elder law and disability law.¹²

Doctors and Lawyers—Working Together?

The Elder Law Clinic's location in a vibrant teaching hospital, the Wake Forest University Baptist Medical Center, allows it to include experienced physicians in training the students. Legal issues often arise due to health problems, so students need some knowledge of the terminology of geriatrics, psychiatry, and neurology. In class, a board-

certified physician provides an overview of mental capacity issues. This helps the law students better handle guardianship cases and matters in which competency is an issue.

Under the leadership of the medical school's Dean William Applegate, the teaching partnership has continued to flourish.¹³ An experienced member of the medical school faculty takes the law students through an intensive care unit. These practitioners are the best teachers to explain the realities of end-of-life care and the benefits and limitations of advance medical directives.¹⁴ Hospice and palliative care are discussed, including basic Medicare coverage rules. Because elder law is by its nature a multidisciplinary practice, students need to have some understanding of these important areas of health law.

One final aspect of this medical-legal partnership is worth noting: this collaboration has allowed a coordinated response to proposed legislation affecting health care for the elderly. Several years ago, when a bill was introduced into the General Assembly that would have made it a felony to "assist in suicide," the Elder Law Clinic was able to serve as a catalyst to present a thoughtful response.¹⁵ Concerns were raised by a wide range of medical professionals that such a law would stifle good end-of-life palliative care. Health care providers would be scared off from providing adequate pain medication. Moreover, there was no evidence of any problem of "assisted suicide." Working relationships that had been built between lawyers who care for the elderly and their medical counterparts bore fruit. Many prominent physicians and health care providers contacted their legislators to argue against the bill. Ultimately, both the Elder Law Section and the Health Law Sections of the North Carolina Bar Association (NCBA) opposed the bill, and were soon joined by the NCBA Board of Governors. When lawyers and doctors are often at odds over such issues as malpractice litigation, Wake Forest's leadership in partnering with the medical community stands out as a hopeful exception.

But let us return to the law office setting—the clinic where the students spend most of their time. Direct client representation means a lot of interviews, fact gathering, advice letters, and figuring out what laws apply. Students cut their teeth on basic

wills, powers of attorney, consumer law advice, guardianship cases, and advice on Medicaid coverage of nursing home care.

Many cases arise from a person's loss of mental capacity. Perhaps a business persuaded an impaired elder to enter into an unconscionable contract. A relative might be seeking to be appointed guardian for a person with advanced dementia, or a completely debilitating stroke, or accident. Financial exploitation is sometimes the issue.

Here is just one example—call him Mr. Smith. When this retired factory worker developed dementia, Mr. and Mrs. Smith and their adult children decided that the eldest daughter should help the parents. She took Mr. Smith to "her lawyer" to sign a power of attorney. Then, she took her father to change his bank accounts to "joint with right of survivorship (JWROS)."

As a result of the change on the accounts, when Mr. Smith passed away, this one daughter got over \$100,000—all that her parents had accumulated. However, Mr. Smith had a will in which he left everything to his wife and, if she wasn't living, in equal shares to his seven children. This raised an obvious question: when his daughter took him to change the accounts, did Mr. Smith realize the import of the change to JWROS? Probably not. Law students Angela Cinski and Walter "Trip" Baker, now both practitioners in this state, did a superb job representing the widow in Forsyth County Superior Court. They drafted a complaint alleging breach of fiduciary duty and asking the court to impose a constructive trust on the funds. Preparing briefs, exhibits, and witnesses for the trial was a demanding but wonderfully educational experience for both students.

When the defendant filed bankruptcy, to try to discharge the state court judgment won by the students, another student—the next semester—took over and successfully argued that federal bankruptcy law barred the discharge of this type of debt. And that student won, too.

Students often advise families who have a relative in a nursing home. During the spring semester of 2006, second year student Suzanne Pomey helped a woman whose husband had an accident and requires nursing home care. The federal Medicaid program is covering part of the cost, but most of the husband's income was also having to go towards his care. This left

the wife with very little to live on. Under federal law, if the “community spouse” can establish in court that she needs more income, more income can be allocated to her from the “institutionalized spouse.” Suzanne gathered the facts, drafted the necessary pleadings, and obtained the court order that her client needed.

Community education is a part of the students’ experience. They each give a program, usually to a church or community group of seniors. Topics range from advance medical directives to avoiding consumer scams. Some years ago, for example, Jennifer Patterson gave a talk to a group of retired Western Electric employees about the complex topic of Medicaid coverage of nursing home care.¹⁶ These programs give students a chance to think on their feet and to see how a presentation about the law can be a useful client development tool.

Each student in The Elder Law Clinic has at least one client who is home-bound or living in a nursing home or assisted living facility. The students also visit a respite care program for people with dementia. The legal lessons? They learn about “levels of care” and the legal rights of the residents of long term care facilities.

Office management issues are another part of the learning experience in The Elder Law Clinic. Students sign off on weekly “conflicts” checks, as in any law firm, in case a conflict is not picked up by the computer-

ized checking system. Also, the important role of support staff to a successful practice quickly becomes apparent to the law students. They see the client coordinator, Jan Scales, as she patiently handles and screens telephone calls, carefully reviews letters and documents for accuracy, and helps the program turn out the best possible legal work. Students are trained to keep thorough file notes, from the initial interview, through phone calls and client meetings, to the final case disposition. They learn to follow protocols requiring the use of engagement letters and letters terminating the representation. Clear and regular communication with the client is emphasized.

From High Heels to High Ideals

Besides teaching lawyering skills and legal principles, The Elder Law Clinic seeks to impart to students a commitment to the ideal of compassion and community.

Hopefully this ethic of service will grow so that, as lawyers, they will carve out the time to help others. They might accept *pro bono* referrals from legal services, join the board of a non-profit group, or manage their law firm’s *pro bono* program.¹⁷ This generosity is modeled for them by the North Carolina Bar Association, whose foundation has provided funding for a Client Needs Fund at the clinic for several years.¹⁸ The ideal of reaching out to others is the first one articulated for attorneys¹⁹

and is a focus at Wake Forest University, which has as its motto, “Pro Humanitate” (for humanity).

Collegiality among lawyers is another professional ideal the students learn. As a solo practitioner with ten new associates every six months, I am especially thankful that my colleagues in the bar share their expertise.²⁰ We also turn to the other fine clinical law programs in this state. Just recently, for example, law student Kara Sullivan represented a grandmother who had adopted her minor grandchild. Due to an illness, the grandmother wanted to make arrangements for this child in case of death or disability. On this matter, the Elder Law Clinic was assisted by Duke Law School’s AIDS Legal Project. Kara learned from the experts how to set up a “standby guardianship” for her client.²¹

Wake Forest’s “pro humanitate” extends to lawyers, of course, and so The Elder Law Clinic also provides resources in a variety of ways to the bar. Besides having a library available for lawyers, it maintains the most extensive collection in the state of Internet resources for the older client.²² Links are provided to state and federal regulations, ethics materials, recommended books, and legal organizations and advocacy groups. Other resources include a PowerPoint presentation on how to select a long-term care insurance policy,²³ a link on locating an elder law attorney in another state,²⁴ and brochures developed by The Elder Law Clinic, such as “Consumer Tips on Nursing Home Discharge.”²⁵ Students participate in developing materials that may be of use to the bar, such as a resource list on “Estate Planning for Unmarried Couples”²⁶ recently added to the clinic’s website. They are encouraged to write articles for practitioners.²⁷

Students in The Elder Law Clinic find, upon graduation, that they sometimes are teaching their elders in their firms. They also have become leaders in the bar, teaching overflow audiences at CLE programs on elder law, as have Tate Davis of Lewisville, Caroline Knox of Hendersonville, and Aimee Smith of Winston-Salem. And they share their expertise and time by participating in the leadership of the rapidly growing Elder Law Section of the NCBA as have Christopher J. Leonard of Wilmington and Jennifer Barnhart Garner of Pinehurst, among others. Many of them, like Heather

Angela Kreinbrink (spring 2006 student) confers with geriatrician Mary Lyles, MD.



Johnson Bowen, share their expertise by assisting hospice programs in community education programs.

Ethics are a fundamental lesson in The Elder Law Clinic. It may surprise the reader that the hardest topic is often “Who is the client?” If the elderly client is accompanied by his family, the student learns to direct his or her attention to the client.²⁸ In most cases, the first and only face-to-face interview is with the elderly client. In this meeting, rapport is built and the student and client can clarify the client’s goals and to whom disclosures are made. Then, in an engagement letter, the student confirms the list of persons to whom disclosures can be made. Students are trained to give the confidences of an elderly client the same respect as those of other clients.²⁹

In some cases, the clinic’s brochure “Why Am I in the Lobby?” is given to the elderly client’s family. It helps to gently educate the family about the issues of client identification, conflicts of interest, competency, and confidentiality. This brochure has been adopted by the American Bar Association,³⁰ the Canadian Bar Association (in both French and English), and Solicitors for the Elderly, a practitioners’ organization in the United Kingdom.

The Elder Law Clinic also has served as a resource to the State Bar when professional ethical issues arise regarding elderly clients. The clinic provided input on ethics opinions regarding the preparation of powers of attorney,³¹ the representation of impaired clients in guardianship cases,³² and the clarification of the attorney’s role when first approached by the family member of an elderly person who may become a client.³³ It has obtained an Ethics Advisory Opinion clarifying that an attorney may breach confidentiality to disclose a violation of elder abuse statutes.³⁴

The ideals studied in The Elder Law Clinic go even further than community service, professionalism, and professional ethics. Students grapple with how best to balance the elderly client’s goal of independence—an ethical ideal expressed in the principle of autonomy—with society’s interest in protecting vulnerable people from exploitation, expressed in the ethical concept of beneficence. This dilemma is not a theoretical academic exercise in this course. Consider the student who represents an impaired elderly person whose family wants



Elizabeth Bernard (spring 2006 student) meets with a hospitalized client.

their parent forced out of her home and into someplace “safe.” When a clinic student serves as this client’s court-appointed guardian ad litem in a guardianship case, the clash of ideals can leave that student with his or her first gray hairs. Until recently, the duty to serve as a zealous advocate was not clearly set out in state law, though it was eloquently presented by a national leader in the field of elder law and disability rights, A. Frank Johns of Greensboro.³⁵

A young law student in The Elder Law Clinic may find himself pondering some difficult questions. Some of their clients are dealing with major health problems, such as a stroke or Alzheimer’s disease. Is this the person’s sole responsibility, or should society step forward to help? How far should the “ideal” of personal responsibility be taken? From the perspective of an advocate for older people, it seems the pendulum may have swung too far. Families provide most of the long term care in this country. Older people themselves and women in particular bear the heaviest load. They do this for no pay and often at a great sacrifice to their health and economic security. Does our health care policy—those laws embodied in Medicare and Medicaid—treat equitably those with chronic illness?

The tension between ideals of independence and autonomy versus social responsibility underlie many of the cases handled in

the clinic. Like other busy practitioners, we do not spend enough time focusing on this big picture in The Elder Law Clinic.³⁶ Class discussions do not do justice to the enormity of the ethical challenges faced by our aging society. It is apparent our current approach to long term care is less than ideal, for example, unless one is wealthy. Middle class families are left with their heads spinning and wallets empty when faced with expensive long term care.

There is much to learn and much advocacy to be done. The law students learn professional ethics and the ethic of service to others. Most importantly, their generation will decide what is the right thing to do for the growing numbers of older people.

Wake Forest University’s commitment to helping others while teaching students is demonstrated in many arenas. In the 15 years since it was created, The Elder Law Clinic has come a long way. ■

Professor Mewhinney, who has been the managing attorney of the clinic since it was started in 1991, is a former chair of the North Carolina Bar Association’s Elder Law Section. She is a Certified Superior Court Mediator and is certified as an elder law attorney by the National Elder Law Foundation, a specialty recognized by the North Carolina State Bar Board of Legal Specialization.

For elder law resources, see the website of

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the Wake Forest University Law School's Elder Law Clinic: www.law.wfu.edu/eclinic.

Endnotes

1. A traditional law school class offers one credit per classroom hour. In The Elder Law Clinic, students get four credits, or 40% of the normal academic credit. They put in a minimum of ten hours: eight hours in the clinic and a two hour weekly class.
2. Students become "Certified" by the State Bar only upon approval by the law school dean, if under the supervision of a licensed attorney. Rules and Regulations of the NC State Bar, Subchapter C, Sec. 0200, Rules Governing the Practical Training of Law Students.
3. Elder law is a broad field and most attorneys handle only several aspects of it. Historically, it came out of the estate planning and probate field, and now includes issues of long-term care planning, health care decisions, elder abuse and breach of fiduciary duty litigation, age discrimination, public benefits, and disability law. Typical litigation also includes guardianship, will contests, and nursing home negligence.
4. For some basic demographic information, see <http://www.aging.unc.edu/infocenter/slides/index.html> or <http://www.census.gov/prod/2001pubs/c2kbr01-10.pdf>
5. Janeway was dean of the School of Medicine from 1971 to 1994.
6. The Elder Law Clinic was initially funded in part by the US Department of Education, in a program to teach law students and increase legal services to under-served communities. Since the mid-90's, it has been funded primarily by the university, including the School of Medicine. Foundations, law firms, and individual attorneys have made financial contributions to The Elder Law Clinic. For information on how to contribute, contact Margaret Lankford at (336) 758-5431.
7. The elder law program was named The Legal Clinic for the Elderly for about the first ten years of its existence.
8. Many students also enroll in the law school's Litigation Clinic, directed by Clinical Professor Carol Anderson. In this program, they are placed in a variety of settings, both civil and criminal.
9. Currently, the income limit for a single person is \$1,700/month and for a married couple it is \$2,200.
10. Clients are only seen during the academic year,

although The Elder Law Clinic is open year-round. During months that the law school is not in session, the managing attorney and a paid summer clerk handle on-going cases.

11. "Dead People" is the law student terminology for "Decedents' Estates and Trusts."
12. Liipfert is a partner with the firm of Craig, Brawley, Liipfert and Walker, and is certified as an elder law attorney by the National Elder Law Foundation.
13. The students have the option of attending a Memory Assessment Clinic or a Geriatric Consultation Clinic, which address issues of dementia, polypharmacy (drug interactions), depression, and ability to live alone. The medical center also has provided opportunities for the law students such as participating in the medical center's ethics committee, observing the administration of electroconvulsive therapy (ECT), and attending meetings of the Institutional Review Board, a federally-mandated approval mechanism for all human research projects.
14. For a thought-provoking article on this topic, see Carl E. Schneider, "After Autonomy," 41 *Wake Forest L. Rev.* 2, 411, 425-429 (Summer 2006). Regarding the limited effect of the federal law aimed at increasing the use of advance directives, see Edward J. Larson & Thomas A. Eaton, "The Limits of Advance Directives: A History and Assessment of the Patient Self-Determination Act", 32 *Wake Forest L. Rev.* 249 (1997).
15. Senate Bill 145 of the 2003-2004 Session.
16. Patterson is now a practitioner in Charlotte.
17. Many local lawyers, too numerous to name, have generously assisted The Elder Law Clinic by taking referrals. Most recently, these include David Pishko, Clyde Cash, Edward Griggs, Susan Ryan, V. Tate Davis, Scott T. Horn, Aimee L. Smith, and Penni Bradshaw. Tripp Greason, an attorney at Womble Carlyle, coordinates that firm's *pro bono* program and has been invaluable in arranging for assistance to elderly clients. The firm of Kilpatrick Stockton has done terrific work representing grandparents who have custody of minor grandchildren.
18. The fund covers expenses such as court costs, filing fees for powers of attorney, and litigation expenses.
19. NC Rules of Professional Conduct, Rule 0.1(A), provides that a lawyer is "a public citizen having special responsibility for the quality of justice."
20. Some of the attorneys who have assisted, on a consultative basis, included Gail Arneke, Robin Stinson, Anna Caldwell, and Mark Addison.
21. See G.S. 35A-1373.
22. <http://www.law.wfu.edu/lawyerinfo.xml>. Readers interested in getting a twice-yearly newsletter mailed to them should contact Jan Scales at scalesjn@law.wfu.edu or by calling (336) 713-8630.
23. <http://www.law.wfu.edu/legalinfo.xml>, under Long Term Care Insurance.
24. <http://www.naela.com/>
25. <http://www.law.wfu.edu/Prebuilt/NHdischarge.PDF>
26. <http://www.law.wfu.edu/x5468.xml>. This resource is both for gay and lesbian couples and for the increasing number of older heterosexual couples who choose not to marry.
27. Articles written by students for *Elder Law*, the newsletter of the NCBA Elder Law Section: Susan J. Ryan, "The Risks of the Easy Power of Attorney," Vol. 8, No. 4 (May 2004); Robert E. Rude, MD (Dr. Rude was a student in the clinic, after many years in medical practice), "Physician Orders for Scope of Treatment (POST)," Vol 9, No. 2 (Dec. 2004).
- Articles written by students in collaboration with Prof. Kate Mewhinney for that newsletter: "Three Simple Steps Lawyers Can Take to Protect a Home: Medicaid and the 'Intent to Return Home' Rule," March 2003, John T. Griffin, reprinted in newsletters of Real Property Section (June 2003) and Estate Planning Section (Nov. 2003); "Prosecuting and Preventing Financial Abuse Under Powers of Attorney," Jan. 2002, Alex N. MacClenahan.
- Using research by student Karen W. Neely, see Kate Mewhinney, "Gifts with Powers of Attorney—Are We Giving the Public What it Wants?" 35 *Wake Forest Jurist Magazine* (Summer 2005) 14-17; reprinted in *The NC State Bar JI*, Vol. X, No. 4, Winter 2005; reprinted in *Experience* magazine, ABA Senior Lawyers Division, Vol. 16, No. 3, Spring 2006.
28. Often, but not always, the client chooses to include the relative at the end of the interview. But the risks of "undue influence" and unintended family domination during the interview merit careful attention.
29. For a comprehensive overview of ethical issues in elder law, the reader is referred to the *NAELA Journal*, Vol. 2, No. 1 (2006), which focuses on this topic. To obtain a copy, contact NAELA at (520) 881-4005, ext. 115 or email Jonathan Boyle at jboyle@naela.com.
30. The ABA brochure can be seen and ordered at <http://www.abanet.org/aging/lawyerrelationship.pdf>.
31. 2003 Formal Ethics Opinion 7.
32. 1998 Formal Ethics Opinion 16.
33. 2003 Formal Ethics Opinion 7, Inquiry #4.
34. EA 2394, at <http://www.law.wfu.edu/prebuilt/EA2394-Ethics&FinancialAbuse.pdf>
35. Frank Johns was the first chair of the NC Bar Association's Elder Law Section, which now has almost 500 members. He was also the president of the National Academy of Elder Law Attorneys (NAELA), which has 5,000 members, and is a fellow of both NAELA and the American College of Trust and Estate Counsel (ACTEC). N.C.G.S. Sec. 35A-1107(b) now requires that the guardian ad litem present the respondent's views to the court. Previously, guardians ad litem would generally present only their views on what was in their client's "best interests."
36. Fortunately, the law school faculty includes Professor Mark A. Hall, a national expert in health care law and public policy.

In Search of a “Pretty Pig”

BY JAMES EARLY JR.

Jason sought the golden fleece, Moses the Promised Land. My quest was to try and find all of the best barbecue places in each of the 100 counties in North Carolina, critique them, and write a book about my findings.

In preparation to write this book, I traveled extensively in all 100 counties of this great state, drove more than 18,000 miles, talked to more than 1,500 people, and critiqued 228 barbecue places in six months. This journey took me from the outer banks to the border of Tennessee. I tried to learn as much as I could about raising hogs, methods of cooking barbecue, various kinds of sauces and dips, and the history of the people who raise the hogs, cook the barbecue, and those privileged to enjoy it.

After completing my journey, I concluded that:

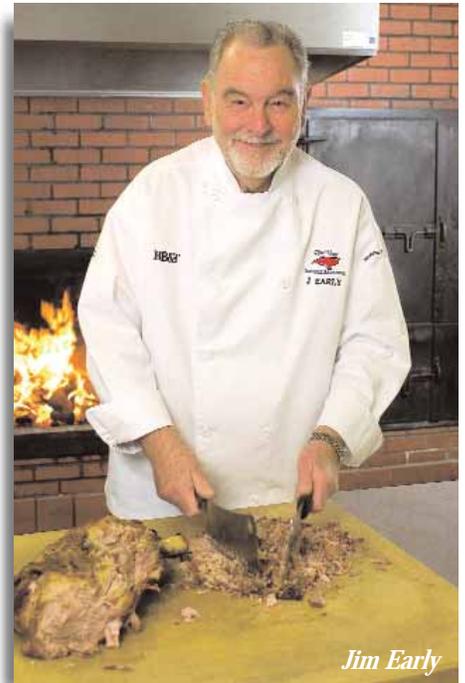
■ **BARBECUE IS COLOR BLIND.** Native Americans shared their method of cooking meat slowly over live coals with white settlers who later shared these skills with blacks who developed and refined these skills in their roles as cooks and barbecue journeymen. The blacks shared some of their cooking skills and secret recipes with whites. Today, whites and blacks share their wonderful slow roasted product with every nationality that makes up this wonderful melting pot we call America.

■ **BARBECUE IS TRADITION.** Those dedicated souls who spend 14-16 hours a day

producing good barbecue take pride in the fact that their place has been in business for 40, 50, or 60 years and that it was founded by their grandparents or parents and is now carried on by the third or fourth generation. Such places with their retro 50's décor seem to take us back to a kinder, gentler time.

■ **BARBECUE IS A BONDING AGENT.** Perhaps more than any other casual dining food, barbecue brings together people of different races, creeds, religions, and socioeconomic levels. Pull into the parking area of any good barbecue place and you will see luxury motorcars, SUVs, pickup trucks, motorcycles, and junkers that barely made it to the lot. Professionals, educators, athletes, skilled and unskilled workers, unemployed, and winos come together to share what may be their only common interest—good barbecue.

■ **BARBECUE IS UNIVERSAL.** Barbecue is found in some form in each of our United States and it is generally found in some form in every country on the planet. People like the taste of slow roasted meat. The animal or critter (or the parts thereof) that produce this treat may not have made our A list, but for a certain group of people in a particular place, it was good barbecue.



Jim Early

I am a trial lawyer who speaks nationally on quality of life, stress management, and the tenants of less is often more. Therefore, I had to find a window that would permit me to do the field research for this project without stringing it out too long, and to continue to serve my clients and keep my speaking engagements. Careful review indicated this was most doable May through October. In May 2001, I commenced a regime of practicing law 40 hours in four days. This usually entailed 14-15 hours a day at the office. On Thursday night I would bail out and drive to the area I intended to work Friday, Saturday, and Sunday, if possible. I would arrive at some small town and find a room around midnight. If I could not find a room, I slept in my Blazer and washed up at a truck stop. At 5:00 a.m. I was up talking to anyone I could find at businesses, truck stops, restaurants, etc. about bar-

becue. The question I posed was, "If your best friend was celebrating a birthday today and wanted to eat barbecue, where in this county would you take them as a treat?" When I had a list of names, I commenced my daily search. As soon as the kitchen staff was in the closest restaurant, so was I. When they were cutting out the lights at the last place I could find that day, I trundled off to yet another small-town motel and repeated this scenario on Saturday. Sunday morning I slept in and returned home to do about five hours of dictation of my notes on Sunday afternoon. Sunday night I crashed. I repeated this scenario every week for over six months.

In an effort to be ethical and fair about critiquing each place, I decided not to eat any meals, snacks, or beverages while on the road. This enabled me to stay constantly hungry and wanting to eat at every place I stopped. I generally could critique three to four places a day. I would order a sample of the barbecue in all the ways that it was served—chopped, coarse chopped, and sliced—along with a tablespoon of slaw, one hushpuppy, and a milkshake cup with water and slices of lemon. I would cleanse my palette with the lemon water before attempting to taste the barbecue. I would then take a bite, taste it like a wine, and write what I experienced. This was followed by more lemon water and repeated with the other styles of barbecue. I tasted the sauces individually with a spoon in the same fashion. I then added sauces on the meat. I tasted the slaw and ate half a hushpuppy. I did not try the side dishes. I ate Altoids between each barbecue place to again freshen my palate.

I was able to stay perpetually hungry all day since I never ate more than several spoonfuls of food and half a hushpuppy at any one place. I did not feel it was fair to the next place I would visit if I had curbed my hunger by eating at the previous place. I also tried to prevent saturating my palate with the barbecue or sauce flavors of the previous place that would impede me from having a fresh taste for the next offering.

I actually lost 15 pounds during the six plus months I did field work for the book. I guess between eating healthy and heart wise four days a week, I inadvertently backed into a mini Adkins diet during my field work. My blood pressure (generally 150) dropped to 132 from the time I had it checked before starting this project until completing it six months later.

Inevitably when people find out that I



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have written this book, they ask the question, "Which is the best in the state?" There is no correct (politically or otherwise) answer to this question. There are a number of good barbecue places across this state. There are barbecue places in some areas that are equally as good as barbecue places in other areas of the state, but their style of cooking and sauces are different—good nonetheless. To be included in my book, a barbecue place had to meet three criteria: (1) it had to cook its own pork; (2) it had

to make its own sauce or dip; and (3) the barbecue, the sauces, the slaw, and hushpuppies (to my taste) had to be GOOD! I made the assumption that if they could cook good barbecue, come up with their own sauce or dip, and fix good slaw and hushpuppies, they could probably come up with good side dishes and desserts as well. People come to barbecue places to eat barbecue, they do not

CONTINUED ON PAGE 29

The Fun Tribe—*aka* The North Carolina Barbecue Society

BY JAMES EARLY JR.

North Carolina is not only First in Flight, but also the “Cradle of ‘Cue.” We have long claimed the former, but have been remiss in establishing the latter. It is time we step up as a state and rightfully claim what many of us have known for a long time—that



North Carolina originated barbecue (it's a noun), we produce the BEST, and we are the “Barbecue Capital of the World.”

A number of states and some cities have their own barbecue society. Kansas City has had the Kansas City Barbecue Society (KCBS) for 20 years. It is well known, well run, and has 6,000 members and chapters in all 50 states and a number of foreign countries. North Carolina has never had a barbecue society and we should have had the first. Barbecue started on our eastern shores, it did not start in Kansas City, Texas, Memphis, Chicago or any other place claiming to be a barbecue Mecca.

North Carolina needs a good strong barbecue society to promote our agriculture—nationally and internationally. We are the second largest pork producing entity on the planet. Sampson and Duplin Counties are the two

largest pork producing counties in the world. North Carolina is synonymous with great basketball and great barbecue. Millions of words are written about our basketball, but few writers truly understand our uniqueness in the world of barbecue.

The North Carolina Barbecue Society (NCBS) will have its own bi-monthly newspaper, *The Squealer*; that will be the voice and carry the news of the Tar Heel barbecue world. We will sponsor educational programs at all school levels regarding North Carolina and its barbecue heritage. We will participate in films and documentaries regarding North Carolina's culture and barbecue history. I have already assisted in a film called “Barbecue is a Noun”

that played the River Run Film Festival to wide acclaim and is currently playing at various film festivals nationwide.

NCBS, a non-profit corporation, will support and promote ALL North Carolina barbecue events statewide and assist (if asked) in any way that is appropriate in keeping with its charter purposes. Its goal is to preserve our barbecue heritage and to promote North Carolina as the “Barbecue Capital of the World.”

We need to preserve our barbecue culture and our barbecue heritage. To that end, NCBS will produce videos of the present living pit masters as they work their magic at the pits and capture their wonderful stories, experiences, and grilling methodology, so it will not

be lost with the passage of time. I have also arranged with my friends who are barbecue icons, nationally and internationally, to assist with these videos and add their knowledge, character, and color to this project. With the assistance of others, I have selected 25 of the best barbecue places that are still cooking with wood or charcoal to be designated as Historic Barbecue Pits. These 25 barbecue places would be part of a Historic Barbecue Trail across North Carolina and become part of our tourist industry. The North Carolina Barbecue Society Historic Barbecue Trail is now being considered by several state agencies to be included on their websites as well as that of NCBS.

We hope to have minorities again involved in North Carolina barbecue. Fifty to 60 years ago, all of the barbecue places or joints were mom and pop operations with the kids assisting after school. About half or more of these mom and pop operations were owned and operated by minorities. Minorities have played a significant role in the development of North Carolina's agriculture products—in particular barbecue. When I did the field research for my book *The Best Tar Heel Barbecue Manteo to Murphy*, I went to all 100 counties in an effort to find the best barbecue in all the counties in the state. I critiqued 228 barbecue places in my efforts and found only six minority owned and operated barbecue places on my journey. There may have been others, but I did not hear of them or find them. Almost all of the pit masters that I met were minorities, but the businesses were not owned by minorities and only a few of the businesses were owned and

operated by women.

In our effort to preserve our state's heritage, culture, traditions, and those things that set us apart from other states, we would link up with the Slow movement that is already well established in Europe and in the US. The Slow movement is designed to preserve the traditional ways of doing things such as making wines, cheeses, etc. that have historical significance to particular areas. Barbecue is a significant part of our culture. Very few places are still cooking with wood or charcoal over open pits. The stories, the methodology of cooking, and the folklore retained by the present living pit masters will be gone if not preserved in some fashion for future generations to enjoy. Most of these men are in their 60's and have been applying their trade for 25-30 years. In all likelihood, at their deaths, many if not most will be replaced with electric or gas cookers. We need to preserve this body of knowledge and we need to train young pit masters to carry on this tradition.

It is the goal of NCBS to promote events like the Tar Heel Barbecue Classic. The Classic would start as a two-day event for the public and hopefully become a three, four, or five day event much akin to Memphis in May and be held in conjunction with hot air balloon festivals, World War II war bird fly-ins, music festivals, rodeos, horse shows, sports events, etc. In addition to promoting existing barbecue festivals, NCBS would also promote the best beach party on the east coast on an annual basis. This event would take place in early fall. It would be called the Lost Barbecue Party and produced at or near Manteo on the outer banks.

North Carolina needs the North Carolina Barbecue Society and NCBS needs the help of men and women with vision, high energy levels, a penchant for thinking outside the box, and a passion to promote this great state. We need the help of state agencies who are in a position to assist with this project as well as various chambers of commerce across this state and those service organizations that could provide "worker bees" necessary to bring NCBS and all it would represent to the people of North Carolina and our visitors from out-of-state.

Membership in NCBS is only \$35.00 per year. Membership would entitle one to a membership card, certificate, window decal, and bi-monthly issues of *The Squealer*, the voice of NCBS. Other benefits would be preferred status for grilling/cooking classes, BBQ judge training, etc. along with direct input to the NCBS Board as to where members would like their society to go and how they would like for it to get there. Lawyers have always had a sense of history and have taken the lead in movements that mattered. If only one-third of the North Carolina State Bar members were to join NCBS we would be the size of the largest barbecue society our first year.

Please contact NCBS at (336) 768-2547 or Jim@jimearly.com for a membership application. We need some of your time, energy, and funds to further the goals of NCBS (aka "The Fun Tribe") to wit: to cook and eat barbecue as often as possible, preferably in the company of good friends, and to promote the Old North State as the "Cradle of 'Cue."

Keep the fires burning! ■

Pretty Pig (cont.)

come because of banana pudding. If a place has good sides and desserts, that's a plus but that's not what brings 'em in and brings 'em back.

For me, barbecue generally falls into two categories—good and not so good. Good on a scale from 1-10 can range from 5-10. A number of the places that I critiqued (to my taste) would fall in the 5-6 range, meaning GOOD. Some of the places I critiqued (to my taste) would fall in the 7-8 range, meaning BETTER. A few (to my taste) would fall in the 9-10 range, meaning BEST. Every barbecue place included in the book is not

as good as every other barbecue place included in the book. Every barbecue place included in the book is, however, the best (to my taste) I was able to find in that particular area.

I hope each reader of my book can vicariously experience my journey as I attempted to ferret out the best barbecue places in the Tar Heel State. Did I find them all? No! And if I failed to find a "treasure" that you know about, please share that information.

The journey that produced *The Best Tar Heel Barbecue Manteo to Murphy* carried all of my senses to new heights and fed my soul as well. Beyond the good food and beauty of rural North Carolina, the thing that made

this adventure shine for me was the people. The outpouring of friendship that I experienced, the warmth, the fellowship, and the laughter will be with me all my days. The book can be purchased at Border's Bookstores or ordered online at www.jimearly.com. Monies from this book are shared with Special Olympics North Carolina. ■

Jim Early is a practicing lawyer, international hunting and fishing tour guide, professional seminar speaker, and author of several books and numerous articles on Southern cooking and barbecue. Jim is the father of three children and calls Winston-Salem home.

Military Law in Afghanistan

BY GRIER MARTIN

The week after the attacks of September 11, 2001, I, like thousands of other reservists, volunteered for active duty. In March of 2002, I reported to Fort Bragg, NC, to serve in the XVIII Airborne Corps Office of the Staff Judge Advocate

(OSJA). The OSJA is, more or less, the law firm for the XVIII Airborne Corps, a large organization consisting, in part, of the 82nd Airborne Division, the 101st Airborne Division, the 3d Infantry Division, and the



Visiting the base at Kandahar to pay a courtesy call on the law offices of JAG Jeff Winslow.

10th Mountain Division. Like a civilian law firm, the OSJA is divided up into several practice areas. I was assigned to the Legal Assistance section, tasked to provide legal advice to soldiers on issues ranging from domestic law to estate planning.

Legal Assistance is generally the first stop for new judge advocates fresh out of law school. At the time I was there, it was also where mobilized reservists, regardless of experience, were frequently sent to be sized up before moving onto other practice areas. For the most part, my practice was similar to that of a small town civilian lawyer (except no billable hours). Every few days, however, some-

one would interrupt my work and ask if I wanted to join them in jumping out of an airplane.¹ A few mornings a month we loaded weighted rucksacks on our backs and set out on a 6-12 mile march. These events, I think, are unique to the practice of law at Fort Bragg.

Though Fort Bragg was only about a one and a half hour drive from my home in Raleigh, I stayed in a hotel room in

Fayetteville most nights. With the entire office conducting physical training at “0-dark-30” every morning, I needed to be nearby. As a result, I quickly bonded with other orphaned reservists who were further away from their families.

I can’t help but compare these uncertain days so soon after 9/11 to what military life must have been like after Pearl Harbor. We

didn't know if more attacks were coming and what lay ahead for us. Many of us had been uprooted from our homes and found solace in the incredible sense of purpose we all shared. In spite of the loneliness and uncertainty, we all felt that we were part of something meaningful. Certainly, when early morning PT was interrupted each day to salute the raising of the American flag, we all knew we were exactly where we needed to be.

In May 2002, XVIII Airborne Corps assumed responsibility for the war in Afghanistan and sent a large force over, including a group from the OSJA. We soon learned that this group would be replaced in November. That's how I found myself on a darkened Air Force jet making a swift spiral descent into Bagram Airfield, Afghanistan. Upon exiting the aircraft after midnight, I found myself on a plain nearly a mile high beneath a beautiful clear starry sky uncorrupted by smog or city lights.

The next morning I awoke to find myself in a vast parched plain surrounded on all sides by mammoth, distant mountains. Drought and deforestation has made Afghanistan a very dusty country, ensuring that I would not be breathing any fresh mountain air. Though Bagram is nearly a mile high, the temperature did not seem to vary from central North Carolina. The drought was continuing, but was interrupted by the occasional downpour and dusting of snow. I would be amazed at how little rain it takes to turn dust into impenetrable mud.

After recovering from a nasty case of jetlag, my teammates and I spent the next week settling in. By wartime standards, our accommodations were not bad at all. I shared a large tent with around five other officers. Though not luxurious, the tent did have wood floors, sporadic heat, some electricity, and cots. While the nearby portajohns were far better than the slit trenches other soldiers in other parts of Afghanistan were using, I can't say they really were as cozy as the tents. We even had shower tents a short walk away, though hot water was sporadic. I'm certain the world record for the shortest shower was set and broken several times that December in Bagram during a hot water outage! Most important for any soldier's morale, however, is food. Our arrival was fortuitously timed, because the food service had received a major upgrade two weeks before our arrival. We were fed two hot meals a day, with a packaged MRE (Meal, Ready to Eat) for lunch. I usually loaded up at

breakfast and dinner and skipped lunch. The quality of breakfast and dinner was truly amazing considering that we were on the other side of the world in a combat zone. Eggs, toast, sausage, bacon, milk and cereal for breakfast and even an occasional steak and shrimp dinner were all testament to the American military's logistical ability.

Part of our orientation involved briefings by the personnel we were replacing. Anytime a force is relieving another, the Army is very concerned about continuity: will the replacements get the benefit of the experience of their predecessors so that nothing is lost in the handoff? In the civilian practice of law, this would be equivalent to working on a large case with the same team of lawyers for six months, and then, in the middle of trial, having to turn the case over to another group of lawyers with no experience in the case. Fortunately, the staff judge advocate was staying on for another six months, so continuity concerns were not as great as they might have been. The staff judge advocate (SJA) is the head lawyer for an Army unit. In our case the SJA was Colonel David Hayden, now retired from the Army and practicing in the US Attorney's Office for the Eastern District of North Carolina in Raleigh.

One by one, the departing personnel briefed us replacements on their jobs. We learned that the deputy staff judge advocate, a lieutenant colonel, made the office run smooth according to the SJA's instructions. He also handled a variety of legal issues. The chief of operational law, a major, had primary responsibility for legal issues arising in the actual conduct of the war, such as what is a legal target and what methods of attack can be used. Both international and United States law govern this area. Subordinate to the chief of operational law were three operational law attorneys, all captains. Each of the three had additional responsibility for separate practice areas. One dealt with criminal law issues and a variety of administrative law issues. Another dealt with fiscal law, a burgeoning area of practice in the military. This practice area deals with issues concerning what the Army can spend the taxpayers' dollars on. Congress has placed many limits on how the military can spend appropriated funds and a complex web of other restrictions governs how a commander can spend money. Commanders take these rules very seriously and the fiscal lawyer was thus in high demand. The third area handled by a captain included foreign claims and

legal assistance for soldiers. Foreign claims involves administration of the process established to compensate Afghans for damage caused by American forces. This was the job to which I was assigned. In addition, we had a non-commissioned officer in charge (NCOIC), a sergeant, and an enlisted soldier, each of whom were part paralegal, part legal secretary, part office administrator, and all soldier.

The main OSJA office was located in a building that had been part of the old Soviet base. It had been restored to a comfortable but Spartan condition with electricity and heat. The chief of operational law and the fiscal law attorney were located in the Joint Operations Center (JOC), closest to the action. The JOC was where the war was run on a day-to-day basis and was the largest tent I have seen that didn't contain elephants, trapeze, and clowns.

My paralegal and I set up shop in a building that had also been part of the old Soviet air base. Perhaps because of its resemblance to one of Tom Bodett's nondescript inns, the structure had been christened "Motel 6". Motel 6 had electricity, phone service, and sporadic internet access, but like all buildings on post, had no plumbing. Believe it or not, I was able to use Lexis in the middle of a combat zone at a speed not too different from that of the dial-up access of my early days in civilian practice.

Most of my practice revolved around foreign claims. Under federal statutes, the military has the ability to compensate foreign nationals whose person or property has been damaged by US forces. The system is not fault-based, so I was not required to find wrongdoing by our forces. The system is, in part, intended to be a goodwill tool to soften the impact of our forces. My job was to investigate claims filed by Afghans and, if I found the claims meritorious, to make payment. Much of the work was done in the vicinity of Bagram. But, as the only person with authority to adjudicate claims in a country roughly the size of Texas, there was more than a bit of travel involved.

Within two weeks of arrival, I set out on my first claims investigation. Traveling by helicopter, we headed to a remote region of the country. Since helicopter travel was at a premium, we combined our mission with an Army doctor to provide humanitarian medical care to Afghans in the village. Also accompanying us was a security team of cavalry troopers from the 82d Airborne Division.

Our goal was to land in the village where the alleged damage occurred, investigate, and quickly depart.

After several attempts at finding level ground, the chopper landed in a valley whose walls seemed to be not much wider than the span of our rotor blades. When the wind from our departing taxi died down, we consulted our maps and GPS and discovered that we'd been deposited in the wrong village, a few miles from the correct target. With the helicopters too far gone to retrieve us, another plan was necessary. We decided to leave the doctor and half the security team near the landing zone. The rest of us would head out on foot for the correct village. The terrain was rocky and mountainous, and we were at a much higher altitude than the nearly mile-high Bagram. After two weeks in country, the experts say one should be about 80% acclimated to the altitude. In this difficult landscape, the remaining 20% would have come in very handy. But, the early morning ruck marches and PT at Bragg paid off, and we made the trip without incident.

Upon arrival at the correct village, I had a chance to catch my breath and reflect on the surroundings. The village, nestled in a narrow valley, was merely a collection of primitive wood and stone huts with no electricity, plumbing, heat, or any of the infrastructure we take for granted in the US. While much of Afghanistan has, as they say, been "bombed back to the Stone Age" during its many wars, this part of the country had barely left that era. Primitive subsistence farming was the only occupation, one that the ongoing drought had rendered difficult.

Working through an interpreter, I was able to get a rough idea of what had happened to bring us here. US forces had found a cache of Taliban weapons in a cave adjacent to the village and blown them up. The resulting explosion damaged the roofs and windows of some of the huts. Causation seemed clear, but the tough part was measuring the damages. Going to a local Home Depot to price shop windows was not an option. In the end, I found resolving a claim, like everything in Afghanistan, boils down to negotiation. I initially believed my job was to serve as a finder of fact, determining damages as accurately as possible and then offering that amount to the injured party. I quickly learned, however, that I needed to start with a lowball offer, act offended when it was rejected, then make small talk until I deemed the injured party was ready to consid-

er a higher offer. After rejection and protestations on his part, the cycle would repeat until an agreement was reached. My skills acquired in settling these claims served me well at the bazaar held on post where I was able to successfully bargain for some lovely carpets. After concluding the investigation, we headed back to the landing zone to meet the returning helicopter. Other than a few tense moments, the return trip passed easily.

At any given moment, a soldier will either think he has the best job in the Army or the worst. I am convinced that the foreign claims job was the best. Because of the requirements of the job, I was able to get off post more than other judge advocates. While they were more connected to the immediate conduct of the war, I was able to see much more of the country, interact more with the people, and learn more about the culture. I found Afghans to be welcoming hosts to guests, avid bargainers, and cautious optimists about the future of their country.

Unfortunately, claims occasionally involved Afghan fatalities. These cases required careful coordination with Afghan authorities. In part, this coordination was necessary because the rules governing claims payments partially incorporate the law of the nation where the claim arises. Thus, in one case of several deaths, I had to learn what I could about the Afghan concept of negligence. I traveled to Kabul to meet with an Afghan general who, as best we could tell, was a senior military lawyer. He spoke no English and my Dari was limited to "yes," "no," and "please," so we spoke through an Afghan interpreter who was a medical doctor by training. Trying to grasp another culture's idea of an abstract legal concept would be a challenge if both parties speak the same language and share a similar legal tradition as, say, America and Britain do. It's a bit tougher where there is a language barrier and some differences exist in legal tradition, as between America and France. Here, however, there was no common language and no common legal tradition. And, we were trying to communicate through an interpreter who was unfamiliar with legal terminology in Dari, much less English. After considerable interaction, it became clear that in Afghanistan a strict liability standard applies in far more areas than it does in America. After a few hours of conversation, I silently thanked my law school torts professors and returned to Bagram. Truly, trying to understand what the Afghan lawyer was trying to tell me while struggling to com-

municate to him the American tort system challenged my ability to understand the true nature of law in a way it never had been before. While the growing trend of teaching the nuts and bolts of the practice of law is necessary, it is important to continue to teach the broad themes of the law. No amount of clinical work or trial advocacy class could have prepared me for this kind of work.

While most of my practice involved foreign claims, I did spend much of my time helping soldiers with their legal problems. Even when not deployed, the youth and transience of military personnel ensures their need of frequent legal advice. Near any post in the US, a host of predators seek to lure soldiers into consumer scams, payday lending, and used car lemons. Further, military life is tough on families, resulting in a tremendous demand for domestic law advice. When soldiers go off to war, these problems often are exacerbated, and the lack of good communication makes resolution of these issues even harder. While I was not able to completely solve many of the soldiers' problems, I was at least able to mitigate some of the war's effects.

One area where I was able to make a difference was in helping non-citizen soldiers prepare citizenship application packets. After 9/11, President Bush signed an executive order eliminating the waiting period for any active duty military personnel applying for citizenship. This action opened the doors for thousands of service members to immediately apply. Many immigrants applying for citizenship in the United States are stymied by the bureaucracy they face. The communication difficulties in Afghanistan made the process even more difficult, but we made do with the resources at hand. We cut deals with the Public Affairs detachment to take digital pictures of the applicants and persuaded the Military Police to get the required fingerprints. No one, native born or naturalized, deserves citizenship more than this group serving America at war. Playing just a small part in helping them get their citizenship was one of the highlights of my legal career.

The operational law work, though not the largest part of my practice, was perhaps the most interesting work. Operational law is a field unique to military lawyering. Military justice is, for the most part, similar to civilian criminal justice. My experience with foreign claims showed me that it was, in many respects, similar to insurance law and tort law in the civilian world. Moreover, fiscal law has

many analogues in civilian governmental law. Only in the military practice of law, however, will an attorney have the opportunity to advise a client on how to legally use a weapon to launch an attack on other human beings. Obviously, the responsibility to deliver accurate advice in this area must be taken seriously. Advice that is too permissive could result in unneeded suffering and can damage the credibility of US forces. Advice that is too restrictive can unnecessarily handicap our troops and result in casualties amongst our forces.

The law governing this area is often vague. For example, it is illegal to use weapons “calculated to cause unnecessary suffering.”² What suffering is necessary and what is not necessary? Why is any suffering necessary? Or, in a war where it is legal to use bombs whose concussive force kills people, why should it be illegal to use other methods to kill? These questions aside, an operational law attorney may be called upon to opine, on short notice, on issues such as this. I know of no parallel in civilian practice and nothing as thrilling.

While the period of large-scale engagements had ended months before, there was, and is,³ clearly still a war. Though there were to be no more Tora Boras and Anacondas, American and Coalition forces were constantly in action around the country. While on post in Bagram, we felt relatively safe. In the civil war between the Taliban and the Northern Alliance, Bagram had been on the front lines. But, the populace was generally favorably disposed to Americans. The Pashtun dominated areas in the rest of the country, on the other hand, were less friendly. There were some bad apples about in our area, however, and we occasionally came under rocket and mortar attack at Bagram. When traveling off post, we were always aware of the threat of ambush or improvised explosive devices (IEDs). These IEDs were not the threat in Afghanistan that they have become in Iraq, but attacks did occur and we were ever alert to the possibility. Several casualties occurred during my tenure and the saddest moments of my tour came each time we lined the main road to honor the procession carrying the bodies to the Air Force plane waiting to take them home to America.

There is an amazing ailment that afflicts every soldier as he nears the end of his tour overseas. School teachers would recognize it as an adult version of the antsiness children get as summer vacation approaches. In our group, we did not know the exact date of our depar-



On a claims investigation, having just returned after hiking a few miles in the mountains from the village where Martin led the investigation. They were awaiting pickup by a helicopter.

ture. Rumors even abounded that we would be held over in Afghanistan in order to facilitate the other war in Iraq. But, once we finally became confident that we would be leaving soon, we struggled to keep focused on our jobs and not on the calendar. We resisted the temptation to keep checking the flight schedule and number of open spaces on each planned flight. So we packed our bags and waited for space to open up. Finally, I was awakened in the middle of the night and told to be ready to board the plane home in 20 minutes. Trying not to wake my tent mates, I struggled to get dressed and pack the last few necessary items. After hauling my bags to the flight line, I boarded the plane and departed Afghanistan.

A recent *Time* magazine cover story called Afghanistan “The Other War.” With the nation focused and divided on the conflict in Iraq, many of us Afghanistan veterans perhaps have a small chip on our shoulder about “our” war being relegated to the back pages of the newspaper. At the same time, we have the advantage of having served in a conflict that seems to have the support of a greater percentage of the American people than does the war in Iraq. We had no worries about people back home supporting us, and that may be a decent trade off for serving in the “other” war.

Beside the obvious lessons on negotiation and the clear demonstration of the importance of accurate, timely legal advice under pressure, I learned some broader lessons on the practice of law from my service in Afghanistan. There are many reasons why

Afghanistan is in the state it is in today. Geographic, economic, diplomatic, and ethnic forces have ravaged the country for centuries. Yet the rule of law, had it existed, could have contained all these forces. We in America should never take for granted how little separates us from a chaotic nation like Afghanistan. We in the American legal profession must take seriously our role in preserving and nurturing our system of laws. ■

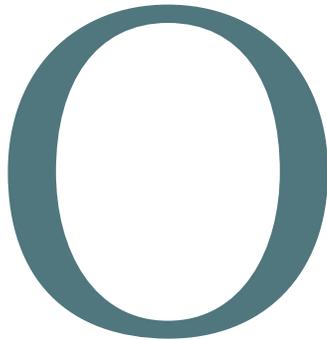
Grier Martin is a member of the North Carolina House of Representatives. A major in the Army Reserve, he is currently assigned to the Office of the Staff Judge Advocate, US Army Special Forces Command (Airborne) at Fort Bragg, NC. He is a graduate of Davidson College (BA), the University of North Carolina School of Law (JD, served as note editor, North Carolina Law Review), and the Judge Advocate General's School (LLM).

Endnotes

1. For information on a combat jump made into Panama by an Army judge advocate, see Frederic Borch's *Judge Advocates in Combat*. Borch, a retired judge advocate, was until recently the clerk of court for the Eastern District of North Carolina.
2. Annex to Hague Convention No. IV, 18 October 1907, embodying the Regulations Respecting the Laws and Customs of War on Land, art. 23, para. (e).
3. When measured as a percentage of casualties per personnel serving, Afghanistan was even more deadly in 2005 than Iraq. *Afghan Insurgency Still A Potent Force*, United States Institute of Peace, available at www.usip.org/pubs/usipeace_briefings/2006/0223_afghan.html.

Professionalism in Practice

BY NANCY E. FOLTZ



Our local bar association in Gaston County, consisting of approximately 150 lawyers, held a seminar on March 17, 2006, on professionalism. I was asked to speak to provide “a female perspective,” and I agreed to do so as

long as I didn't have to prepare a manuscript, was allowed to tell war stories, and didn't have to be politically correct.

I prepared my notes for my 20 minute talk by reflecting upon my 25 plus years of practicing law, and the lessons that I have learned about professionalism from older and wiser members of the bar who trained me when I knew nothing except what I had read in books. I particularly remembered the influence of the partners in the first firm where I worked when I graduated from Wake Forest University Law School in 1980: Jim Craighill, John Rendleman (both now deceased), John Ingle, and Bob Blythe of Mecklenburg County. They were gentlemen and professionals of the first degree and spent untold amounts of time teaching me how to be a lawyer. I also thought a lot about the many mistakes that I have made over the years, and the regrets that I have about some of my behavior toward other lawyers and their clients. I repeat my mistakes from time to time, or think up entirely new mistakes, but I keep encouraging myself to live up to some ideal that is more than the minimum required by the ethics police.

The result of my reflection is the following, informal Ten Rules of Professionalism.

Perhaps I should call them “suggestions” instead of rules, since the idea of rules with regard to professionalism seems to defeat the whole purpose. Professionalism is like obscenity: I can't define it but I know it when I see it. And I don't profess to actually live up to my rules all of the time. They are goals that I try to keep in mind as I go about my lawyer life.

At our seminar, I also told the assembled lawyers that I didn't purport to present a female perspective. Although I am a female, I can only present my own perspective. I have never been a fan of placing lawyers into these categories which, it seems to me, separate us from each other. Male/female, black/white, gay/straight, plaintiffs' lawyers/defense lawyers, lawyers in private practice or lawyers who work for government in some form, we are all lawyers. We share the same stresses and concerns. One of the nicest compliments I have ever received from a fellow lawyer was when he called me “one of the guys.” Gaston County is not exactly a bastion of feminism and liberalism, so that was a nice way to be accepted.

And now for the Rules. These are not in any particular order of importance.

1. Give your fellow lawyers a break.

Rules, rules, rules. We live and die by rules, stacks and books of them. Rules of Civil Procedure, Rules of Court, ethical rules, local rules. Rules which may have nothing to do with the merits of a particular case, or with getting it resolved. Rules with which you can beat your unsuspecting opponent over the head and make his life miserable. Rules, which if insisted upon and adhered to without discretion, may delay your case and cost your client more money. Give your fellow lawyers a break on all of these rules if the circumstances warrant. I have learned that you can concede a lot of issues to your fellow lawyers without damaging your client's position. On the contrary, when lawyers cooperate, clients win.

An example comes to mind: I once got into a vehement argument with a Gaston County lawyer, Bob Forbes, about his request for a continuance of a district court automobile accident trial. The case had been on the calendar several other times, and continued for one reason or another. My client, the defendant, who lived several hours from Gaston County, was grumbling about the delays. So when the case came on the calendar again, and Bob asked for a continuance, I objected. As I recall, I didn't think Bob had a good enough excuse. The presiding judge heard our arguments, and I remember being very self righteous in arguing my client's position. The continuance was allowed, as I had suspected it would be. But I had damaged my relationship with Bob temporarily, for no compelling reason. The case was finally tried, and I've never heard from that client again. Bob, on the other hand, is someone I see every week, have had many cases with, and I value his friendship. It didn't help my client's case at all to make a fuss about a continuance.

All of us need continuances from time to time for reasons that may not be very good. I remember the very wonderful Max Childers, who died in 2004 at the age of 83, requesting a

continuance at calendar call because he “just wasn’t ready to try the case.” That was good enough for most of the judges who were calling the calendar.

So, when your fellow lawyers need something from you in a case, which costs you and your client little or nothing, give them a break. I guarantee you will need a break yourself someday.

2. Be scrupulously trustworthy.

When I first came to Gaston County to practice law in 1985, I was taken aside by Grady Stott and Lin Hollowell, the senior partners in my firm, and told discreetly which lawyers in our small bar could be trusted, and which lawyers to watch out for. I thought at the time, and still do, that it would be an absolute disgrace to be one of the lawyers that other lawyers thought could not be trusted.

Being trustworthy, by my definition, means more than just refraining from bold-faced lying. It means that your word is good; if you say something, you mean it and will follow through. Your verbal agreement with another lawyer will be as good, even better, than someone else’s written contract. If a mistake is made and documents are signed which do not reflect the true agreement of the parties and lawyers, you will aid in correcting the mistake, even if it was in favor of your client.

Don’t run to judges with *ex parte* orders when you know that another lawyer may have been consulted in a case, even if he is not yet lawyer of record. Don’t ask a judge to sign an order which will embarrass that judge later. I’m told that our senior resident district court judge, Dennis Redwing, has a list for his secretary of lawyers whose orders he will sign, no questions asked. He assumes that when he gets an order from a lawyer on the list, it reflects the agreement of the parties or fairly represents the ruling of the court and the wording has been approved by opposing counsel before the order even makes it to his desk. You want to be on that list.

If I had to rank my Rules of Professionalism, I think I would put this one first: Be scrupulously trustworthy. Your reputation as a trustworthy lawyer can only be earned by years of fair dealing with your peers, and it is almost impossible to salvage if it is compromised. NO CASE and NO CLIENT is worth the loss of your credibility with your fellow lawyers and judges.

3. Don’t downgrade or embarrass other lawyers and judges.

I’m sure that all of us, including me, have

excused our failure to get the result we wanted in a case by blaming it on the actions of the opposing lawyer, or the failings of a particular judge. Sometimes such criticism is valid, many times it is not. Either way, don’t do it. Don’t do it because no matter what, you do not know the whole story as to why the opposing lawyer did or said what he did, and you can’t read the judge’s mind.

I have found myself, on occasion, getting very smug when a client comes to see me after being previously represented by another lawyer. Even though my experience has taught me that clients who are unhappy with one lawyer are likely to be unhappy with the second one, I find myself, in my superior wisdom, expounding upon the way that I would have handled the legal matter differently if I had been involved from the beginning. I would have done a better job, for less money, and been nicer, more responsive, more efficient, and gotten things done with less delay than that sorry schmuck they hired in the first place. Many times I find myself wishing the sorry schmuck would take the case back, because it turns out to be far more complicated than I thought, with the expense being caused by my client’s unwillingness to concede even the smallest of points, and my responsiveness and niceness diminishing with time as I’m called every day about the most trivial of issues, only to have the client complain when my bill reflects the time spent on matters which do not move the case forward.

I don’t like it one bit when I hear that other lawyers have disparaged my handling of a case, especially when they don’t know the agonies I may have been through with the disgruntled client. So I know it is unprofessional when I do the same thing to other lawyers.

As for judges, except in very rare cases, they have their reasons for rulings that you can’t understand at the time. They are doing their best. Many times an inexplicable decision has seemed reasonable, even wise, to me as time goes by. Bad mouthing judges demeans the whole system in which we labor. Since we can’t change the fact that judges are human, and therefore make mistakes, then don’t belabor that point with your clients. It doesn’t change anything, and it scares the hell out of them that some of the most important decisions of their lives are taken from them and placed in the hands of a capricious, moody, biased individual who happens to be a golfing buddy of the opposing lawyer. And you, their high priced advocate, can’t do anything about it

except make sure they know you are not to blame. Tell your clients that if they can’t live with the uncertainty of a stranger’s decision, they should make a greater effort to negotiate a settlement of their legal issues. But don’t downgrade the judge who has to make a decision and be the bad guy.

Finally, embarrassment. I happen to think that those of us who chose this profession in the first place have a high tolerance for embarrassment, since we are immediately subjected, from law school on, to failing in public. Remember our professors with their Socratic method? Remember your first hearing? First jury argument? Did anyone reading this ever appear in front of Judge Frank Snapp? He was so smart, and so intimidating, that the whole courtroom was embarrassed when he came down on an lawyer.

Judges, please don’t embarrass us. We know as well as you when we are not fully prepared, and when we are stumbling. You don’t need to remind us in front of our clients and other lawyers. Call us to the bench if there is a point you simply must make. And lawyers, don’t embarrass each other. If you happen to be better prepared, and have a case that the other lawyer overlooked, be grateful, not self-satisfied. Don’t play games if you have the home court advantage; don’t make fun of lawyers from out of town. Be especially gentle with young lawyers. They know not what they do.

4. Don’t downgrade or embarrass other lawyer’s clients.

This is probably the most difficult rule for me to follow, in practice. Whereas I usually like other lawyers, and judges, and so find it comes naturally to give them the benefit of the doubt in most cases, many times I do not like or respect the opposing client. The fact that I have practiced mainly in domestic and family law for the last ten or so years may explain that. But once again, I do not know the whole story of the complicated relations that cause people to separate, and it is not my job to disparage my client’s worthless spouse or ex-spouse.

To illustrate this point, I recall a case I had with lawyer Nick Street of Gastonia. I represented a young woman who had married a much older man. He had kicked her out, and she had no job, no money, and no means of support. To top it all off, she was pregnant with his child. He was a wealthy, but uneducated redneck, in my opinion. He had the audacity to question her pregnancy, even though she brought me the positive results of a pregnancy test, which I passed along to Nick. Every time

Nick made the point that my client could be faking. I blasted him. I believed my client, who seemed like a vulnerable, helpless victim. The case finally settled, with my client agreeing to far less spousal support than I thought she was entitled to, which I attributed to the husband's intimidation of her. I thought he was despicable. Several months later, I happened to see my client walking down Main Street, and she looked remarkably thin for someone who should have been about seven months pregnant. I immediately called Nick Street, who told me (without being too smug) that my client had used someone else's urine for her pregnancy test, and had never been pregnant. Far from being a helpless victim, she was a remarkable con artist. Nick's client, the despicable redneck, had been right all along. Apparently he was not too upset about the settlement, because he was happy to be rid of the vixen, and wasn't saddled with 18 years of child support. I learned a valuable lesson.

If we only represented responsible, fair minded, sensible, even tempered people who met all of their obligations in a timely manner, most of us would have very little to do. As my friend Mark Warshawsky told me when I pointed out that his client in yet another domestic case was a sorry bastard: "Yes, but he's my sorry bastard." Good point, Mark.

5. Help your fellow lawyers.

Outside of the day-to-day grind of cases and hearings, help your fellow lawyers on a personal level. A little bit of professional courtesy goes a long way. Let out of town lawyers use your office for depositions, or your library for research. Answer questions about local practices and procedure when a lawyer unfamiliar with them calls you. Share your forms and experiences. Talk to law students and new lawyers. If one of them comes knocking on your door looking for a job, give them a few minutes of your time, and a few leads.

On an even more personal level, lend a sympathetic ear to those in this stressful profession who need someone to talk to confidentially about marriage, kids, finances, substance abuse problems, or anything else that you might be able to understand better than the average Joe. My friend Rachel Pickard has worked with PALS for years. The good that she does goes undocumented. I know that she has been called out to counsel lawyers at times that were very inconvenient to her—nights and weekends. She maintains her sense of humor and is nonjudgmental. Mike Hodnett has worked on domestic cases for lawyers here

in Gaston County, free of charge. We've had some lawyers here with very major personal problems—our bar has actually sent a delegation to talk and try to help. Some of these offers of assistance have not been well received, but the point is, don't sit back and do nothing when you see a fellow lawyer suffering.

I'm grateful to the lawyers who have handled my kids' traffic tickets, just because I asked. Cecil Whitley in Salisbury, whom I've never met, took care of my son's ticket for costs only, just because I was a lawyer. I'm publicly thanking him here. I'm grateful to the lawyers who sent flowers, cards, and food; took care of my cases; and offered to sit with me after I had major surgery last summer. I'm grateful to the advice I received when I was going through a divorce. This hasn't happened yet, but I'm expecting my lawyer friends to come and get me out of jail if I ever get put in there for contempt, with my big mouth.

Take care of each other. As I said before, we are all in this together.

6. Help those who can't afford your services.

Volunteer, or *pro bono*, legal work is still not a requirement to maintain your license in North Carolina. But do it anyway, formally through the Legal Aid program, or informally. It's the right thing to do.

You have a privilege license. Remind yourself that being a practicing lawyer is truly a privilege, and as we all know, with privilege comes responsibility. There are so many people who need our help, who can't pay our fees. In Gaston County, our Volunteer Lawyer Program focuses on helping people in family law cases. That is where we see the greatest need. Our small bar has won numerous awards for the work, even on a national level. We are proud of our volunteer work, even though we grumble when locked into a custody trial—the type of trial most lawyers don't like when being paid to do it, let alone do it for free. Yet the rewards of helping others in difficult situations outweigh the costs.

From my observation, North Carolina lawyers in general are meeting their responsibilities to provide free or reduced cost legal work to deserving clients. I think the North Carolina State Bar, the North Carolina Bar Association, and the Legal Aid offices do an outstanding job of coordinating the effort to provide the services and recognizing the lawyers who participate in the programs available to the public. Keep up the good work.

7. Socialize with your fellow lawyers.

This should be an easy one. Hopefully you like lawyers or you would not have chosen to spend so much time with them. Some of you are even married to them! Lawyers are generally extroverts. Lawyers are smart: lawyers are fun: lawyers have great war stories. Lawyers generally have a good sense of humor; after all, if the whole world is laughing at us, we may as well join in.

I've been married to a chemical engineer, and now to an endocrinologist. I can promise you that parties with lawyers are a lot more fun. Not once at a bar party have I seen a lawyer diagram a filtration system on a cocktail napkin. Not once at a bar party have I overheard a discussion about the relative merits of various brands of insulin or thyroid hormone. I've never heard a chemical engineer or a doctor joke. Lawyer jokes, on the other hand, are hilarious.

I urge you to socialize with your fellow lawyers. Go to bar functions and participate in the activities of your local bar. Attend the events to which you are invited. Acknowledge significant events in the lives of your lawyer friends: weddings, funerals, graduations, illnesses, and so forth. Get to know something about the family of your fellow lawyer. Introduce yourself to the local lawyers when you are visiting court in an unfamiliar county.

It's much easier to practice law in a civil manner with an lawyer who is on your courthouse baseball team, or with whom you had a couple of beers on the golf course last weekend. It's more difficult to get upset with an lawyer who sent you a note when your daughter graduated with honors. Lawyers are true and loyal friends, and will be there when you need them. Laugh with them, cry with them, and spend time with them.

Into this category, I will also inject my opinion that we lawyers should honor those fallen comrades who have gone before us to a "higher court." I'm talking about funerals and memorial services. Attend them to show your respect for your fellow lawyer, even if you didn't know him well. In Gaston County, when an lawyer dies, we hold a memorial service at the courthouse to honor the life of the deceased. Our senior resident superior court judge presides, and lawyers who knew the deceased well speak, usually in a humorous vein which might not have been appropriate for an actual funeral. The county lawyers and courthouse personnel are invited and a record is made of the proceedings. In my opinion, every lawyer in every county where this is done

should be present at the memorial service. Whether you knew the deceased well is irrelevant. Honoring an lawyer at a memorial service or funeral shows your respect for his service, for his family, and for the legal profession.

8. Show favoritism.

The word “favoritism” has gotten a bad rap in this politically correct world in which we now live. I say unashamedly that we should show favoritism to other lawyers. Don't treat them like the rest of the world.

However I say this, it seems to sound wrong, so I'll give a couple of examples:

I once found myself wandering dazedly into the unfamiliar territory of traffic court, where I have never practiced. I had been asked by one of the senior partners at my firm to get a case continued. Knowing nothing about traffic court, or criminal court, I nevertheless assumed that I would be treated well and helped along my way because, after all, the assistant DAs were lawyers. I walked up to the desk where the ADA was busy shuffling shucks, and looking harried. He looked to be about 15 years younger than me. I introduced myself, told him I was a lawyer in Gastonia, and was here to request a continuance of the case involving my firm's client. I was told, rather rudely, to take a seat and wait my turn like everyone else.

I was offended by this response to my request for consideration by a fellow lawyer. I think I deserved the courtesy of a polite reply, and unless there were compelling reasons otherwise, I think the ADA should have helped me and ceased shuffling papers for a moment to respond to my request. Even if the response was that I would have to wait for the judge and make my request for a continuance to him, I think that response should have been delivered politely, with some indication whether it would be opposed by the DA or not. Of course, this same ADA was being rude to the ordinary citizens who came forward asking questions, which is also unprofessional, but I did not expect to be treated as a common criminal.

Another example: I've many times been the only lawyer in a courtroom full of parties, waiting for small claims cases or child support enforcement cases to be heard. I think the magistrates or judges should call the cases with lawyers first, before the cases with unrepresented parties. Most of the time, the lawyers who are in court are being paid by someone to be there, and making us wait costs our clients money. Let the lawyers finish their work before

the *pro se* parties. Many of them have other courts where they need to be; making them wait may delay other proceedings.

Return phone calls from other lawyers before you return others. If a lawyer calls requesting that you be interrupted, take the call. If an lawyers says an issue is urgent, assume that it is. Keep other lawyers high up on your list of priorities.

9. Don't be a party to your client's bad behavior.

Your credibility as a trustworthy professional with your peers is a hard-earned, irreplaceable commodity which can easily be damaged or destroyed by participating in or abetting clients' egregious behaviors. We all have to represent reprehensible characters from time to time, but we have the choice of reining them in and refusing to act as hired guns and use the legal system to bully others or achieve unfair results. Despite what a client is willing to pay, a true professional knows when to tell a client to back off or to cease pursuing a result which is harmful. This is especially true in family law cases. I see lawyers filing inflammatory pleadings that allege in detail the flaws of one of the parents and further alienate the parties, making the case more difficult to settle. Long after the lawyers have finished their work and gotten out of the case, these same parties have to parent children together. There is no need to damage the relationship any further than necessary. Don't let your ego as a tough guy lawyer damage the ability of parties to work together to some extent. Don't let the lure of a bigger fee cause you to litigate issues that are better settled.

There are many actions you and your client can “get away with” in a case. These actions are not illegal, and they are not unethical. But taking these actions may not further true justice in the case, as much as hassle the other side. I've had an lawyer file a contempt motion over the most frivolous of disagreements, schedule a hearing and even schedule a deposition prior to the hearing, mainly because the supposedly contemptuous party lived some distance away and could not afford the lawyer fees or time out of work to respond. I've seen an lawyer subpoena an adverse party's employer to court, force the employer to sit through an entire morning of court proceedings, only to release him from the subpoena because, in truth, the real reason for his presence was simply to embarrass the hapless employee.

Use some judgment, and if your client won't follow your advice, get out of the case.

10. Give other lawyers the benefit of the doubt.

If something can be taken two ways, interpret the actions and words of other lawyers in the best light. Don't go around with a chip on your shoulder assuming the worst of your fellow lawyers, absent compelling evidence to the contrary. Assume they are acting professionally, as well as ethically.

Most people do not understand the type of work we do. They do not understand how we can be personal friends with colleagues with whom we are adversaries in the court system. Clients take what is happening to them in the legal system very personally, and they think we should too. Many of my clients are bothered by my friendship with the lawyer who is representing their adversary.

I tell them that I know the lawyers I can trust, after long experience, and that my ability to work with the other lawyer will actually be helpful to their case. I tell them that rather than argue over every fact, every disclosure, every assertion, I will be giving the other lawyer the benefit of the doubt where possible, and not assume that I am being lied to or deceived. I am not going to accuse another lawyer of wrongdoing unless I have clear evidence that wrongdoing has occurred.

One of my favorite war stories illustrates this point: I was trying a case early in my career with the legendary Pat Cooke, one of the greatest trial lawyers Gaston County has ever seen. It was an automobile accident case, and it was not going well for the defense, represented by me. It seemed that every ruling, every witness, every nuance in the case was going Pat's way. I felt like a young whippersnapper, which is exactly what I was, being patronized by a knowledgeable veteran, which is exactly what Pat was. The judge seemed to be on Pat's side, too, and all of Pat's objections were sustained. I swore he was objecting sometimes just to rattle me, and in that, he was successful. Finally, we got to the jury arguments. Pat closed, in his usual eloquent way, and it seemed the jury was eating out of his hand. The judge called a recess before the charge. On his way out, one of the jurors stopped at Pat's table and leaned over to whisper something to him. I was incensed! Surely Pat had done something improper, to encourage this sort of familiarity from a juror. Perhaps he knew the man personally, and failed to disclose that fact in jury selection. Perhaps he had been talking to him in the hallways. It had to be

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Maggie

BY WILLIAM E. WHEELER

The reflection of the moonlight against the white winterscape outside the cabin window provided a clear view of the meadow. In summer it had been strewn with wildflowers, but now was covered with a soft blanket which muffled the sounds of night. Even at midnight through the gently falling flakes he could make out the footprints of some small animal which had recently trekked across the snowy meadow in search of more suitable accommodations. The night was cold and quiet save for an occasional hiss or crackle from the slow burning hickory wood in the old stone fireplace which kept the one room cabin so warm and cozy. Aaron laid the small book of poetry he had been reading by the dimming fire light on the old desk beside him, opened to the entry curiously entitled "Christmas Eve."

Everyone is sleeping. Nothing wakes. The woods are motionless. The wind is down to a whisper. Sleep hums like current—yes, audibly—through the bright steel night.

The evening star rises like a flaming wick. Hills fit into hills like lovers, their great dark straddling thighs clasping still greater darkness where they meet. A star breaks, arcs down the night—like God striking a match across the cathedral ceiling.

Therefore I wish: see my lips move—making your name. It is so still, so still. I am sure that you must hear me—

As he pondered the words of the poem and drained the last of his glass of Scotch, the surrurant sound of a sigh behind him caught his ear. He turned in time to see Maggie adjusting herself in her sleep. She was barely visible, sunk down in the big feather bed in which they had slept and made love during the past several days and nights. The cabin, nestled peacefully in the mountain valley near the river, was a place apart from the world; a

place where time stood still and provided a welcome surcease from the throbbing complexities of life. It was a soothing, mind-healing pastille in any season and in any weather.

Aaron recalled a wet and cold spring day during a weekend he and Maggie spent there the previous year. On that particular day they had stood together late in the afternoon with their arms around one another looking at the rain through the same window, with its blue calico curtains pulled aside, silently enjoying their isolated togetherness. He had thought of that day as a bit dreary. Maggie had remarked at the grace of the rain as it cascaded down the roof onto the ground and made its way across the meadow to the creek below. She had likened the polonaise of the raindrops on the window pane to tears of joy from the eyes of God. Part of her endearing charm was her unique ability to see something lovely and special in simple things. It always made Aaron feel good just to be near her.

He couldn't help but remember how the cabin had first come to his attention. It was a hot July day two years before when he had stopped at a country store nearby for a cold soft drink. As he stood in the store enjoying the respite from the searing heat, he casually inventoried the curious goods and food stuffs found in such places: hoop cheese the color of sumac leaves in September; fried pies coated with sugar oozing their sweet cargo of apple and spice; barrels of apples, not the polished ones found in city supermarkets, but dusky red ones like those freshly plucked from an orchard; handmade dolls fashioned from socks adorned in gayly colored tiny country frocks. A cork board attached to the wall near the door was festooned with all manner of advertisements by the local folk for the sale of used cars, tractors, farm implements, and other items of local interest in that Blue Ridge Mountain community. In the center of the

The Results Are In!

In 2006 the Publications Committee of the State Bar sponsored its Fourth Annual Fiction Writing Competition. Eight submissions were received and judged by a panel of five committee members. A submission that earned honorable mention is published in this edition of the *Journal*. The third, second, and first place stories will appear in the next three editions of the *Journal*, respectively.

board was a color photograph of a cabin with a meadow in the foreground and a creek below. A sign to which the photo was attached advertised it as "One room rustic cabin on five acres with running water, etc." He was not quite sure whether the "running water" denoted modern plumbing or the creek which ran across the five acres. As he looked at the photograph he began to wonder who had lived there and what kind of people they were. The photograph was obviously taken in late spring or early summer. The leaves were still green on the trees, and wildflowers could be seen in the meadow.

Without really knowing why, Aaron decided to ask the proprietor of the store about the cabin and its owners. So as not to seem an overly nosy foreigner, he first introduced himself. "My name is Aaron Coe," he said as he extended his hand to the storekeeper, and followed with "what can you tell me about this cabin?"

"Delmer Jones" was the merchant's reply. Probably because Delmer was alone and without anyone to talk to a good part of the day, the inquiry brought a smile to the storekeeper's face and a story about its previous occupants.

They were an elderly couple who had come down from New York about 15 years ago. "Mr. and Mrs. Benton were their names," said Delmer. "I think they had a place in Florida, but spent their summers in that cabin. A real nice old couple. He was Walter and she was Maggie," he continued.

A shiver of irony ran up Aaron's spine at the disclosure of Mrs. Benton's name. Their two children were grown and long gone—to California, Delmer thought, or maybe it was Florida. She was an artist and he a writer. They seemed very much in love and were always very attentive to one another.

Delmer pointed to a small painting of wildflowers consisting mostly of yellow gentians and sweet william that hung on the wall of the store and proudly proclaimed it to be one of hers. After Mr. Benton had died a few years ago, Mrs. Benton had stayed on alone. But last year her health had declined to the point that her children insisted she move to a retirement community near them—"in California," Delmer thought, "but it might have been Florida," he repeated. She reluctantly agreed to go, but had confided to Delmer and other friends and neighbors in the area that she didn't want to leave the cabin and the mountain valley she and her husband had so enjoyed in their twilight years. The closer the time came for her to leave the more her reluctance to go increased. She died in her sleep the night before the day her children were to arrive to take her with them.

"The death certificate said 'heart attack,'" stated Delmer. "But," he opined emphatically, "as far as folks in this area are concerned, she died of a broken heart."

The elderly couple's children had put the cabin up for sale almost immediately after the funeral. "No takers so far," said Delmer.

Intrigued more by the story than the modest asking price, Aaron decided to have a look at this place, the prospect of leaving which caused the death of Maggie Benton, or so local opinion had it. The realtor was summoned and after a short drive they arrived. It was as advertised—rustic and a bit run down. Aaron was surprised to find not only that the cabin had modern plumbing and running water inside, but also was fully served by electric power. It was less dilapidated than unkept—as though it had suffered more from a lack of love than upkeep. A quick survey of the place revealed a solid log cabin of post-depression era design and building materials, aging but structurally sound.

"Nothing here," Aaron thought to himself, "that wouldn't respond well to a thorough cleaning, some new curtains and a few—very few—modern appliances."

Three things immediately captured Aaron's imagination: the smooth interior log walls, the stone fireplace, and the creek below the meadow. The fireplace appeared to be constructed of smooth round granite stones—the type that might have been used as ballast stones in sailing ships along the coast years ago. It had been well used for several years and a patina of soot on the inside gave it a comforting appearance. The mantle above was made from a roughly hewn sturdy log—oak he thought—that was considerably older than the logs from which the cabin was built. The log walls inside the cabin had a polished look and feel, cool to the touch on the hot summer day, and would no doubt absorb heat from the fireplace and be correspondingly warm in winter.

The creek below the meadow contained a small waterfall about three feet high formed by a shelf of rock across the creek. Below the fall, the creek expanded into a pool about ten feet wide and two feet deep. The bottom of the pool was lined with small, smooth pebbles which would feel good to bare feet on a hot July day. The water ran clear, which the realtor attributed to an underground spring just above the pool. Aaron couldn't resist cupping his hand and filling it with cool water for an impromptu sample from the creek. It had a chlorine free, slightly coppery, rich taste that reminded him of water from the well on his grandfather's farm from which he had drunk when he was a small boy. With a smile, he also remembered that his Maggie's mouth had the same rich honey-copper taste. The instant he sipped the cool, clear water he knew he would buy the place. It had very little practical purpose, but something inside him demanded he buy it. Within a week the final purchase price had been negotiated, a deed transferred, and the transaction closed.

The next order of business was to show it to Maggie. A few days later he called her and told her he had something special to show her. When the appointed day came, a picnic basket was packed, and they drove the two hours from Greensboro to get there. As with other days spent with her it was possessed of a special quality he felt only when they were together.

When she saw it, she smiled broadly and exclaimed, "You bought this didn't you?"

"I did indeed, Maggie," he replied, and quickly added "What do you think?"

"I don't know," she said; "let me have a look around."

As he escorted her through the cabin they surveyed its prospects and possibilities, each making mental notes as they went.

Raking a hand across a dusty windowsill Maggie said, matter-of-factly, "Needs some work, doesn't it?" Before Aaron could reply, she added, "Perhaps some blue calico curtains on the windows."

Rather than enjoin her comments with his own, Aaron decided to see what conclusions and suggestions Maggie would make. He could tell from the way she pursed her lips she was giving careful consideration to the entire matter. As she walked slowly about the interior of the cabin, stopping to examine a nook or cranny, brushing her fingers against a wall or a fireplace stone, he could tell she liked the place. She had that certain with-a-woman's-touch-this-place-could-be-great look on her face. He could see the brightness of possibility shining forth from her eyes.

"It needs a name," she suddenly said.

"What needs a name?" Aaron responded.

"This place," said Maggie.

"Okay," he said, "what kind of name?"

"Something special, something fitting, something...I don't know, something that means something," she replied.

"How about 'The Cabin'?" Aaron said with a wry smile. "It's honest, descriptive, and has eloquent simplicity."

"NO!" she exclaimed in mock exasperation. "Have you no poetry in your soul?"

"NO!" he said happily and grinned broadly.

"I know," she exclaimed, "how about 'Xanadu'?"

"Why 'Xanadu'?" he asked.

"You remember the Coleridge poem," Maggie said pedantically:

In Xanadu did Kubla Khan a stately pleasure dome decree, where Alph the sacred river runs through caverns measureless to man down to a sunless sea. . . .

"It's perfect," she exalted. "We have a river which flows from underground caverns..."

"What we have," he demurred, "is a creek which comes from an underground spring."

"Whatever," Maggie replied, dismissing his unimaginative precision with a wave of her hand.

"Besides," Aaron rejoined, "I'm not sure I want my...ah, our cabin in the vale to be

named by a besotted poet in a drug induced stupor. If we're going to do that let's at least call it something like... 'Margaritaville'."

"Peasant," said Maggie, spitting out the word, "you have no joie de vivre."

"That's true," Aaron said, "but I own the cabin." "And another thing," he interjected while poking holes in the air at her, "I don't understand French."

At that, Maggie fixed him with an icy stare, put her hands on her hips, squared her shoulders and, after hesitating for an instant, spoke with a soft smile saying, "Well, do you understand the phrase 'cut off'?"

Returning her stare, he said "You didn't explain it like that before. 'Xanadu' is a fine name. Should have thought of it myself. Don't know what could have come over me."

They both broke out in peals of laughter and seized each other in a tight embrace.

The front of the cabin faced south toward the meadow and creek below. Windows were cut on either side of the door. Beneath one window on the south wall of the cabin sat an old oak desk. It was more old than valuable, which probably accounted for the fact that it was not removed by the Benton's children when the cabin was sold. It seemed curiously an integral part of the cabin. It also seemed to have found its particular place because of the way the morning sun illuminated it through the single window on the east side of the cabin—as if someone were expected to spend time there in the mornings, perhaps writing.

Aaron and Maggie eventually came to the old desk as they examined the cabin's interior. Natural curiosity compelled them to open the drawers, all of which, save one, operated tolerably well. He had always regarded his bent toward perfectionism as a flaw in his character. On this particular occasion it would not let him accept the single desk drawer that would neither completely open nor close. After fiddling with it for better than ten minutes, Aaron seized the knob and gave it an exasperated yank. Out came the drawer, and over on his rear he fell.

Maggie nearly doubled over with laughter as much as the perplexed look on his face as at the unceremonious way he lay sprawled on the floor of the cabin with the drawer in his lap. She stopped laughing long enough to notice him cocking his head to one side as if to get a better view into the empty space from which the drawer had been so readily snatched. Without a word he moved to his knees and crawled on all fours to the desk.

After reaching into the emptiness with his right hand and arm up to his elbow, she could see he had retrieved something from the drawer space. It appeared to be an old envelope which had been stored in the drawer at one time and had probably been pushed out the back and became wedged between the drawer and its space preventing proper movement in or out.

The envelope was old and faded. It was addressed to "Maggie Benton, 5661 Elm Street, Chestertown, NY" and was post marked January 27, 1945. The return address on the envelope read "Captain Walter Benton, 506 Parachute Infantry Regiment, 101st Airborne Division, APO Europe."

With their attention on their find, Aaron and Maggie opened the yellowing envelope and began to examine its contents. It was a letter written in pencil by a hand obviously under stress.

12/24/44

My Dearest Maggie,

I don't know when or even if you will get this letter. Our situation is not good. We are holed up outside the small town of Bastogne in Belgium. The Germans have us surrounded and apparently outnumbered. The fighting has stopped for the night and the big guns are quiet. It is Christmas Eve. Two days ago the German commander sent a messenger with a surrender ultimatum. General McCaulliff sent a one word reply: "Nuts." Headquarters says we are to be prepared for pitched battle at dawn.

Food and ammunition are in short supply. The putrid stench of death mixed with the acrid odor of battle's cruel afterbirth fills my nostrils and sickens my stomach. Many of the men have worn-out boots and gloves; frostbite has become epidemic in the hard Flemish winter. The sweaty smell of fear permeates the bitter cold air. My men have not been this apprehensive since that night in June when we leapt into the grim dark nothingness of the Normandy sky.

As for myself, I have resolved not to worry. I have made my peace with the Lord and will accept His will, whatever that may be. I continue to pray that on the morning and in the terrible hours to follow I will do nothing to get someone injured or killed unnecessarily. I know all this probably has a

purpose, but it seems such a monumental waste for so many young men, on both sides, to have to die or be hurt. May God bless us all this holy night.

I will use these remaining hours of false tranquility to think of you and the stolen hours we have shared. It seems so very long since I have seen you, heard the laughter in your voice, been embraced by the captivating warmth of your smile, and felt the exquisite passion in the rhythm of your breathing as we made love. I long for you so.

Come walk with me now along the banks of the stream where we held hands and strolled among the emerging verdence of spring; where we felt the wind in our hair and watched it as it whispered through the newborn leaves of the shimmering silver maples; where we listened and pretended we heard that same wind call your name in its gentle gusts.

Come sit with me awhile in the special places we shared in summer: the pond by the glade where we picnicked on hotdogs and wine and laughed at the passersby and what they must have thought of us as we loved in the warmth of the afternoon sun— us not caring; the Inn where we stayed and you read from your journal while I stroked your hair and we talked about all manner of things; the pool beneath the waterfall where we sat naked and bathed one another in the chilled waters from the underground spring.

Come join me in the autumn splendor of our beloved Adirondack Mountains where we hiked and you told me of the poetry you had written born of a fading red maple leaf; where we stood atop a stony precipice and viewed the majesty of the mountain ridges far away and breathed the crisp, clean, and bright blue sky of September.

And now remember with me the happy and peaceful times we have spent in winter's white blanket, skiing and trudging through the snow by day and loving by night when warm was made more warm by the cold outside, and you welcomed me into the warm soft vessel of your body by which we were transported on the winds of our passion to a place and time that knew no limits, and where we luxuriated in the afterglow of our mutual touch until we slept.

I brace myself against the bitter cold of this snowy night only to realize that it can never equal the chill of loneliness I feel for

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to enjoy their work, to know that it is not simply a job. I believe that this is a profession and I came here to help. I learned this well and I am comfortable with my work.

Q: How do you see the future of specialization?

I would like to see more prosecutors and more public defenders join the program. I

think they should be certified specialists. It's one way to tell the public, who often worry about their lawyers, that we take this very seriously and we are committed to this work. Public defenders really know this area of the law.

Q: What would you say to encourage other lawyers to pursue certification?

It is enriching to be motivated by the image of yourself as a counselor of law, meeting your responsibility to the people who entrust themselves to your care. Board certification reinforces your role as such, not just someone who views this as a 9 to 5 day, but as a counselor of law and a professional. ■

Maggie (cont.)

you now. To say "I miss you" would be only half truth. The frigid emptiness I know when we are apart goes far beyond missing you. The longing I feel for you at this moment can only be comprehended and measured by the fulfillment and completeness I know when we are together.

If it is not permissible for us to see each other again in this life, so be it. The love I feel for you is equally as strong as life itself and therefore stronger than death. If I do not return, do not cry for me. Rather, remember the surpassing joy we have shared throughout the years we have had. Remember also you are the seasons of my life: the verdence of spring, the warmth of summer, the color of autumn, and the peace of winter. Were I to live a thousand years I would never have found a woman I wanted, needed, or cherished more than you.

I love you dearly.
Merry Christmas,
Walter

After reading it they both sat silently for a while staring at the letter. Without speaking they both knew that they had inadvertently intruded into one of the most poignant moments the late Mr. and Mrs. Benton had ever shared. They were humbled and a bit embarrassed by having done so. Without saying so, they both understood they would have to send the letter to the Benton's children in California—or was it Florida.

Finally, Aaron broke the solemnity of the moment by rising to his feet and saying "I'm famished; let's eat."

Armed with their picnic basket and a bottle of wine, they went outside and walked hand-in-hand across the meadow toward the creek. Maggie didn't notice the pool at first because it was partially hidden by the phalanx

of mountain laurel that guarded one side. When it came into view, her eyes widened and she uttered a lusty "all right!" Maggie could be as gentle and tender and soft as the down on a dove's breast. However, she was not given to squealing with delight like some women. But then, women who squealed with delight probably wouldn't have in these particular surroundings.

Their picnic lunch was eaten and washed down with generous portions of the chardonnay they had brought. Afterward, they took off their shoes and dangled their feet in the cool water of the pool. Emboldened by their privacy, and a little too much wine, and encouraged by the Benton letter, they soon removed the rest of their clothing and repaired to the middle of the pool. The water was quite chilly at first, especially to bare bottoms. But the heat of the summer day made their ablution more than worth the initial shock. They spent the better part of an hour laughing and talking and washing each other in the refreshing creek water quite as contented as Adam and Eve might have been in the Garden of Eden. With uninhibited innocence they happily shared the simple pleasure of each other's company and thoughts in the bower of nature's beauty. Such was the joy of their relationship; such was the source of their love for one another.

That had been two years ago. Aaron was still surprised that time had passed so quickly. It seemed more like two months. A chill came over him as the wind blew outside and a draft penetrated a small space beneath the windowsill. But the chill was short-lived for without a sound Maggie had risen from their bed and quietly found her way to his side in the darkness. The touch of her warm body next to his broke the chill like the first sunny days of spring breaks winter's icy grip.

"What's on your mind, love?" she purred sleepily.

He turned from the frigid expanse outside

and looked into her face. As he did Aaron noticed the drowsy green of Maggie's eyes reflected golden shards of light from the dying embers of the fire. Silently he drank deeply of her dark Irish beauty.

"Do you remember the letter we found when I first bought the cabin?" he asked.

"The one Mr. Benton wrote to his Maggie on Christmas Eve during the war," she acknowledged.

"I was thinking about how cold and frightened and lonely he must have been that night. The weather must have been a lot like tonight. Mr. Benton must have been afraid he would not survive, but seemed to be able to warm himself and find stillness and sanctuary in his thoughts of her and them. It must have been a very special relationship," he added.

"Must have been," replied Maggie. "Sort of like us," she followed.

"Yeah, I know," he said, and smiled.

"Let's go back to bed," said Maggie in a soft inviting voice.

Aaron and Maggie made love and afterward held each other very close until they both fell asleep. Outside, the winter wind howled and the snow fell deeper. But inside the cabin they were warm and secure even though the flames in the old fireplace had long since flickered their last. On the old oak desk, the book of poetry remained open, . . . a book of poetry entitled *This is My Beloved*, . . . a book of poetry whose author was Walter Benton. ■

Bill Wheeler is a managing partner at the High Point law firm of Wyatt Early Harris Wheeler LLP, where he began practicing in 1975 after passing the bar exam. He graduated from UNC Chapel Hill (Phi Beta Kappa) in 1972 with a BA, and from Wake Forest Law School (associate editor of the Law Review) in 1975 with a JD. He is currently pursuing a masters degree in literature at UNCG.